

San Francisco Law Library

No. 101800

EXTRACT FROM BY-LAWS

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. Any party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.

007, 01



No. 8069

*Vol 1
1950*

In the United States
Circuit Court of Appeals

For the Ninth Circuit.

see Vols 1949-52

San Francisco Law Library

FOSTER AND KLEISER COMPANY, a corporation,
Appellant,

vs.

SPECIAL SITE SIGN COMPANY, a corporation,
Appellee.

Transcript of Record.

VOLUME 3

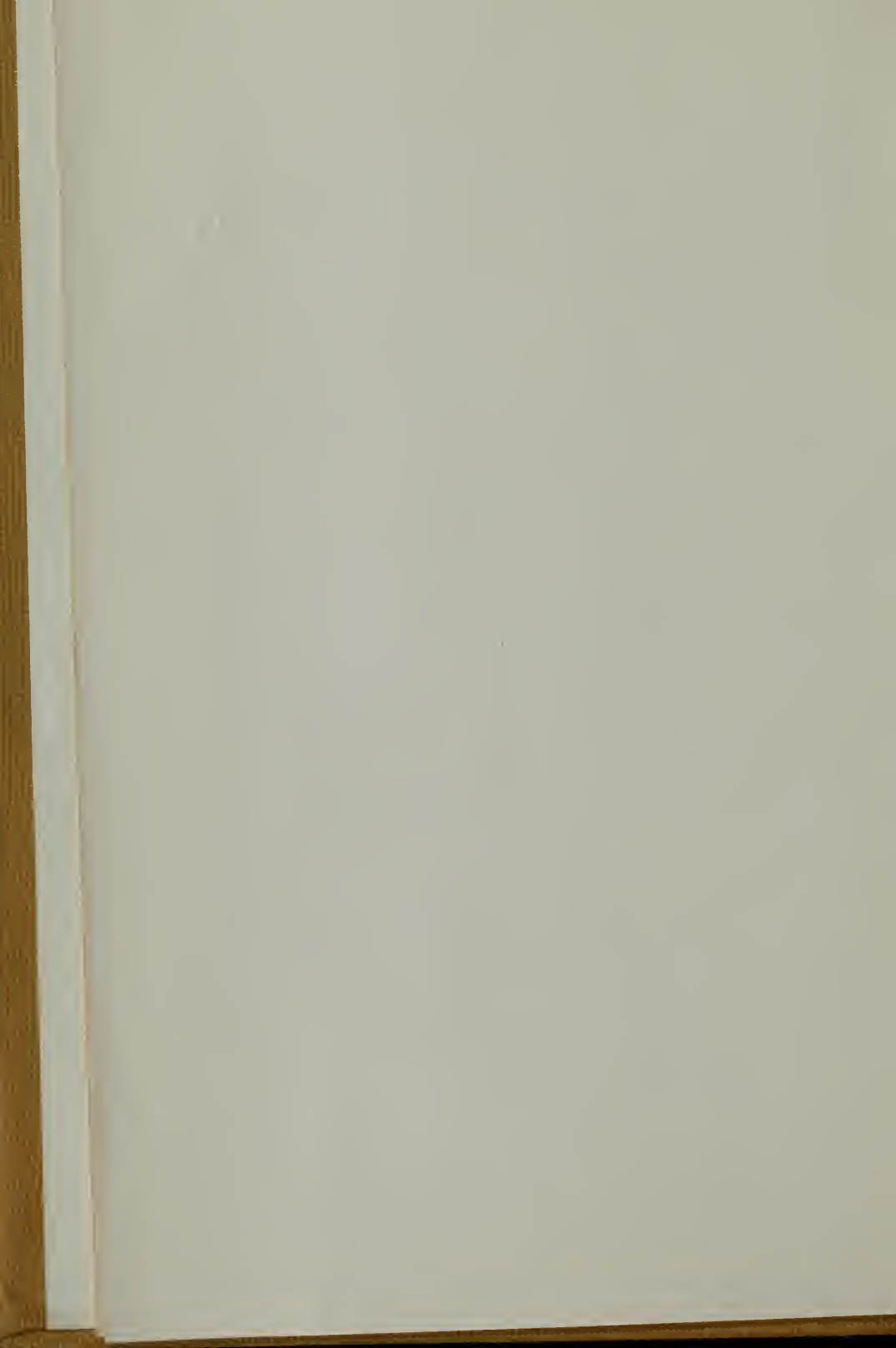
Pages 1233 to 1840 Inclusive.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

DEC 18 1935

*PAUL H. COLEN
CLERK*



No.

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

FOSTER AND KLEISER COMPANY, a corporation,
Appellant,

vs.

SPECIAL SITE SIGN COMPANY, a corporation,
Appellee.

Transcript of Record.

VOLUME 3

Pages 1233 to 1840, Inclusive.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 162-B.]

[Crest]

Foster and Kleiser
Company

SF-LA HWY

LOCATION LS 1.25 Mi. S of S. Lmts San Jose N.
Franklin School

LEGAL

OWNER Southern Pacific ~~Co.~~ Bldg.,
OR

TENANT

ADDRESS 303 Bank of San Jose Bldg., ~~S Jose.~~ S. F.

AGENT

LEASE NO. 1544

CITY S. F.

CLASS. Hwy

PHONE

[In red]: TRANSFER FILE

Date	Amt. Offered By	Remarks
8/18/24		We are letting all SP locations ride without cultivation until gen-

(Testimony of Charles H. King)

eral policy of SP toward our bds
is taken up with higher officials
of Railroad 1/1/26

[In red]: Class D - No lease - contact at least annually
Oct 29 1925 Class D - No Lease Contact At Least
Annually

12/ 8/25 WJH Contact steady unable to secure
lease 10/8

10/ 6/26 WJH Advise no calls up 6/1/27

Apr 20 1927 Class D - No Lease Contact At Least
Annually

6/ 3/27 EG Rental paid (Annually) on May
1st each year. up 6/15

6/14/27 WJH Advise no calls. up 3/1/28

3/ 6/28 WJH " " " up 6/1/28

[Written in red on face]: SEE NEW CARD MADE
UP

No. 5673-C. Special Site vs. Foster & Kleiser. Plf
Exhibit No. 162-B Filed 12/21 1934 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: We finally removed from the location. Leavitt wrote us a letter and told us that they were no longer going to use the Southern Pacific property for advertising purposes and he wanted our board removed. I have made a search for that letter but I could not find it. I have a very clear recollection of the substance of the contents of the letter. I don't recall when the letter was written. It was prior to the termination of the contract shown on the ledger sheet. So we removed our boards shortly after receipt of that letter and Foster & Kleiser built on the same location, possibly a month later. It is open country from there south. There is a stretch there where the railroad and the highway parallel each other for miles. There is lots of open country and available space.

We once had a location on the Sausalito-Eureka Highway 101, north of Sausalito. This lease dated April 23, 1920, signed by T. P. Degnan, covered that property. The lease ran to Ruether and Austin for a period of five years at a rental of \$10. That was the annual rent and that was the way we paid it. The lease is assigned to Gillig Bros. by Ruether and Austin and by Gillig Bros. to Special Site Sign Company. That is the lease under which we occupied the property.

The lease referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 163-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 163-A.]

Ruether & Austin
~~RIEMER RUETHER~~ ADV.
219 Mechanics Bldg.
San Francisco.

ADVERTISING SPACE PERMIT

THIS AGREEMENT, made this 23rd day of Apr, 1920 by and between T. P. Degnan the party of the first part, and ~~Riemer Ruether~~ Adv., part of the second part.

Ruether & Austin

WITNESSETH:

That for the consideration hereinafter named, to be paid by the second party to the first party, the said first party hereby grants to the second *part* the exclusive use of the following premises with free access and entrance to and upon the same at any and all times during the term hereof:

State Highway Marin Co. (Degnan's Place)

situated in the County of Marin, State of Cal for a period of five (5) years from Apr 23, 1920, for the purpose of constructing and maintaining painted, printed,

(Testimony of Charles H. King)

or illuminated signs or devices for advertising purposes, including the placing and maintaining of devices for illuminating of such signs with necessary connections therefore, in consideration of which the party of the second part agrees to pay to the party of the first part the sum of Ten Dollars, payable in advance on erection of sign, for each year of said term during which said premises are used for said advertising purposes.

This agreement shall continue in force from year to year after the term thereof unless terminated at the end of such term, or any such additional year, upon written notice served not less than thirty days before the end of such term or additional year, provided, however, that if said property is sold or possession thereof required by the party of the first part for the purpose of building thereon, or is leased for other than advertising purposes, then this contract shall terminate, and the first party shall refund to the second party the unearned portion of rent paid by second party, if any, and in this event the second party shall remove all signs and connections upon ten days written notice from the party of the first part. In the event that the said premises shall be altered or changed in such a manner that the advertising value thereof is destroyed, or impaired, or should the view of such premises become obstructed, or the use thereof prevented by law, the second party shall have the right to cancel this agreement, and have a refund of the unearned portion of the rent already paid, if any.

The party of the second part is hereby authorized to remove all and any signs of any other person or corporation on said premises, and shall be the owner of and have

(Testimony of Charles H. King)

the right to remove all signs, material, and equipment placed on said premises under this agreement.

Signed -

T. P. Degnan Owner
 ~~Tenant~~
 Agent

1921
1922

Accepted by
~~RIEMER-RUETHER~~ ADV.
Ruether-Austin
Per.....

We hereby assign this lease to Gillig Bros. this date
May 25th 1921

Ruether & Austin
by S A Ruether

I hereby assign this lease to Special Site Sign Co.
this date April 10th 1930 as is.

Gillig Bros
L W Gillig

[In pencil on back]: T. P. Degnan
Sausalito

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 163-A Filed 12/21 1934 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: That location was on the only highway into San Francisco from the north coast. It is what we call a semi-head-on location on a slight bend in the road.

Two Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence, read to the jury and marked Plaintiff's Exhibits 163-B and 163-C in evidence, respectively. Said Plaintiff's Exhibit 163-B in evidence is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 163-B.]

[Crest]

Foster and Kleiser
COMPANY

LOCATION ES Highway 2 Miles North Sausalito
OWNER T. P. Degnan
ADDRESS R. F. D. 1, Box 222, Sausalito
AGENT
NUMBER 2987
CLASSIFICATION Highway
PHONE

TRANSFER FILE

Date	Am't Offered	By	Remarks
8/ 7/22	RC		Sec. 10 yrs from 2/15/23 @ 20.00, form B
2/14/24			Ownership OK

(Testimony of Charles H. King)

- | | | |
|---------|-----|---|
| 8/ 2/26 | | Letter to Gillig req. removal of their sign. |
| 8/ 6/26 | EHD | Gillig has been paying \$10.00 yr. to Degnan since 4/1/20. Lease expires 4/1/25. |
| 8/11/26 | EHD | Requ. be allowed to remain until 4/1/27 as rental is paid until then. Also requests take up with L. Gillig when returns 9/15. |
| 8/12/26 | EHD | Letter to Heider. |
| 8/18/26 | WK | Degnan says OK with him to remove signs but would not give us new lease |
| 3/28/27 | EHD | Gillig says his lease is a good one & defies us to try to remove his bd. or to bld. a panel in front of same. Says F & K have lost all Gillig's business. due to their attitude over this location. |
| 3/31/27 | JWD | Letters to Gillig Bros. & Degnan to remove bldg. within 30 days. 5/1/27 |
| 6/ 9/27 | WK | 5 calls the last two weeks. always out. Left card with Mrs. D. for appt. |
| 6/12/27 | WK | "D" claims Gillig & Heider leases OK claims we bother him to excess over \$20.00 deal. Showed him how our rent paid, for no space & we were desiring |

(Testimony of Charles H. King)

Amt.			
Date	Offered	Date	Remarks
			of 100% refund. or else have comp. Bds. removed. Will let ride till he sees Gillig. Claims he will have no signs after present leases expire. Hwy. Com. objects as to hazzard. up 7/10
10/4/27		JFW	Degnan will not go into matter. Satisfied with his present arrange- ments. Would not grant much of an interview. Gillig sent check for Apr 27-28. rental Up 2/1/28
3/26/28		JFW	Degnan says Gillig & Heider will have to T.D. soon on acct. of Hwy. Com complaint. up 5/15
7/11/28			
7/11/28	2/28	KG	Degnan claims he is going to let all present leases expire and will not give to us or to anyone else. 11/1
11/ 2/28		KG	Degnan will do nothing. No progress. Up 2/1/29

[Stamped on face of card]:

SEE NEW CARD MADE UP.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Ex-
hibit No. 163-B Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 163-C in evidence is in words
and figures as follows, to-wit:

1242

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 163-C.]

[Crest]

Foster and Kleiser
COMPANY

CITY S. F.
CLASS Hwy.
LEASE NO. 2987

LOC. Hwy. ~~ES~~ 2 Mi N Sausalito

LEGAL

LOC. Saus-Eureka Hwy. RS 2-2/10 Mi N Sausalito
app. 600

OWNER T. P. Degnan

ADDRESS ~~R. F. D. 1, Box 222, Sausalito, Calif.~~

Box 220, Sausalito, Calif.

(Old Card in Transfer File)

	Am't		
Date	Offered	By	Contact Data
*8/ 7/22		RC	10 yrs. from 2/15/23 @ \$20.00 yr.—Ann. Form "B" from T. P. Degnan.
3/26/28		JFW	Degnan says Gilbeg & Heider will have to T. D. soon on acct. of Hwy. Com. complaint. Up 5/15/28
7/11/28		KG	Degnan claims he is going to let all present leases expire and will not give to us or to anyone else. Up 11/1/28
11/ 2/28		KG	Degnan will do nothing. No progress. Up 2/1/29

(Testimony of Charles H. King)

7/ 5/29 JFW Degnan says Gilbeg & Heider leases run out in 1930. Will not when grant any further leases where they are out. Up 10/1/29

*10/2/29 JFW See new lease exclusive. 3 yrs. from 2/15/30 @ \$50.00 yr.—Ann Form A-1 from T. P. Degnan. (Non - Community) Include #10211 and #10212.

11/27/29 F T.D. 1-5x10 Heider (Crowe). Up 12/27/29
[Stamped on card]:
STRUCTURES REMOVED—
CHECK FOR REBUILD OR
CANCELLATION

1/ 4/30 JFW OK to rebuild. Degnan will look up expiration of Gilbeg Lease and let me know date. Up 6/1/30

2/24/30 M T.D. 1-25x10 Hwy. Bull.—Heider (Blank) per memo CWH 2/21/30. Refile.

6/11/30 JFW Bring up to JFW. Up 8/1

8/12/30 JFW Bring up 12/1/30. Up 12/1

Am't

Date	Offered	By	Contact Data
4/ 8/31	JFW		Bring up 5/1
*4/14/31	EG		Rental paid to 2/15/31. Up 6/1/31
5/18/31	LWC		Letter to Degnan adv. our intention to canc. as of Feb. 15, 1931.

(Testimony of Charles H. King)

Q What was the value of that location, Mr. King?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further ground that plaintiff's lease had expired at the time his sign was taken down.

THE COURT: Let the evidence be admitted.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 126.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$624.

Witness continuing: We had a location on the property of Cecil G. Day on Foothill Boulevard a mile and a half east of the County Hospital Road in Oakland. We had a lease on the property from the tenant, Cecil Day, with the sanction of the owner, Mrs. Walters, and we erected these 4x6 painted bulletins on the property. We took two leases on the same day. We erected two signs on the property and apparently made two leases, one for each sign. These are the two leases. We paid \$4 a year for each sign.

The two leases referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibit 164-A in evidence, and are in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 164-A.]

2 Signs (Atlas)

Advertising Privilege

May 24, 1927

In consideration of four (4.00) dollars per year to be paid when signs erected and yearly in advance I hereby lease to the undersigned, lessee, the advertising rights on my property wall of building located *at* on Foot/hill Blvd. Known as Ashland farm for advertising purposes for a period of 3 years from date with privilege to said lessee to further use said space for a like consideration for five succeeding periods. Should lessee desire to cancel this contract, lessee shall give lessor 30 day's written notice before end of any term.

Moving to Birdsall July 23/28

Special Site Sign Co.

By E. R. King

Lessee

3225 Louise St., Humbolt 1523

Oakland

Owner

Agent

Cecil G. Day Tenant

Address R. F. D. Bx 213 San Leandro

Lessor

[On back]:

[Diagram of premises.]

(Testimony of Charles H. King)

Advertising Privilege

May 24, 1927

In consideration of four (\$4.00) dollars per year to be paid when sign is erected and yearly in advance I hereby lease to the undersigned, lessee, the advertising rights on my property wall of building located at Foothill Bl'vd. & known as Ashland farm for advertising purposes for a period of 3 years from date with privilege to said lessee to further use said space for a like consideration for five succeeding periods. Should lessee desire to cancel this contract, lessee shall give lessor 30 day's written notice before end of any term.

Special Site Sign Co.

By E R King

Lessee

3225 Louise St., Humbolt 1523

Oakland

Owner

Agent

Cecil G. Day Tenant

Lessor

Address R. F. D. Bx 213 San Leandro

[On back]:

[Diagram of premises.]

No. 5673-C. Special Site vs. Foster & Kleiser Exhibit No. 164-A. Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: As a practical matter, in dealing with some of the landlords where we were putting up two signs, they wanted separate leases and if they wanted it,

(Testimony of Charles H. King)

we gave it to them. At that time there was a Carter Advertising System sign on the west end of the property. The Carter Advertising System was an independent advertising company which was ultimately taken over by Foster & Kleiser. We were on this property long before the leases were taken in 1927. As I recall, we have written leases at our office but I left them in Oakland.

I have drawn a diagram on the board showing the situation in the Cecil Day property. In the lower left-hand corner of the board, on the line of Foothill Boulevard, there is a small panel marked "SSS 4x6". Adjacent to it is a larger one; that is a highway painted bulletin which belonged to the Carter Sign System which was acquired by Foster & Kleiser in 1925. Over on the right of the diagram is another small sign marked "SSS 4x6"; that is another one of our signs. The Carter Company and ourselves had been in the same relative position shown by that sketch for some time and we had no difficulty with them about our structures. We had not ordered them off. At the time we erected our 4 x 6s there was another sign on that property with the name of the ranch on it, the Ashland Farm. There were no other outdoor advertising company signs. I had no knowledge of any leases to other outdoor advertising companies in existence on the property.

Three Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence, read to the jury and marked Plaintiff's Exhibits 164-B, 164-D and 164-E in evidence, respectively. Said Plaintiff's Exhibit 164-B in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 164-B.]

[Crest]

Foster and Kleiser
COMPANY

LOCATION Foothill Blvd. LS 1-1/2 Mi. E. County
Hospital

LEGAL Lot

OWNER J. F. WALTERS

218 Kentucky St., Vallejo

ADDRESS R. F. D. Box 231, San Leandro, Cal

AGENT

LEASE NO. 192

CITY

CLASSIFICATION HWY

PHONE

		Amt.	
Date	Offered	By	Remarks
12-16-21	12.00	EAD	10 yrs. from 12-12-21 @ 12.00 yr S/A Form B
7-28-27		LG	Advised S. S. Co. by letter that we have an exclusive lease on property and to kindly remove structures. Transferred to Lease No. 2443 STRUCTURES REMOVED — CHECK FOR REBUILD OR CANCELLATION OK HHW H Up 10-1-28

[Stamped on face of card] CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 164-B. Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

1250

(Testimony of Charles H. King)

Said Plaintiff's Exhibit 164-D in evidence is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 164-D.]

[Crest]

Foster and Kleiser
COMPANY

LOCATION Foothill Blvd. LS 1.5 mi. E. County Hos-
Rd.

pital 100' 400'

LEGAL

OWNER OR TENANT MRS. M. G. WALTERS

126 Cole St., San Francisco

1225 Sonoma St.,

ADDRESS R. F. D. Box 213, San Leandro 218 Ken-
tucky St., Vallejo

AGENT

LEASE NO. 2443

CITY Oakland

SUR

CLASS. HWY

PHONE

	Amt.		
Date	Offered	By	Remarks
9-18-26		ED	10 yrs. from 9-20-26 @ \$12.00 yr. Ann. Form A-1 from Mr. M. G. Walters
9-13-28		NEB	New lease secured combining Lease No. 777, 192, and 2443.

(Testimony of Charles H. King)

- 8- 9-28 LPG 10 yrs from 9-20-28 @ \$39.00
yr S/A Form A-1 from Mrs. M.
G. Walters. (community).
- 8-29-30 SW Letter from J. F. Walters, advis-
ing new address 126 Cole St., S. F.
- 7-20-31 WAH Letter of cancellation being sent to
S. F. Branch so they may contact
owner in Vallejo.
HOLD RENTAL Up 8-15-31
- 8-10-31 WAH S. F. reports Mrs. Walters moved.
Unable to locate. Writing to old
Vallejo address today trusting
same will be forwarded.
HOLD RENT. Up 9-10-31
- 8-24-31 RW Letter from Mrs. Walters request-
ing that we cancel lease as of
9-20-31 and remove our structure.
- 8-31-31 RW Letter to S. F. requesting contact
with Mrs. W. to get her signature
on cancellation agreement. Issue
T. D. when letter received.
Up 9-10-31
- 9-18-31 WAH Letter of cancellation effective
9-20-31 secured from Mrs. Wal-
ters. She has given us verbal per-
mission to allow structure to re-
main in gratis basis. Up 12-20-31

over

(Testimony of Charles H. King)

Amt.		
Date	Offered By	Remarks
9-20-31	WAH	Verbal permission from 9-20-31 @ Gratis from Mrs. M. G. Walters, owner. Non-community CLASS D—NO LEASE—CON- TACT AT LEAST ONCE A YEAR Up 12-20-31
12-24-31	WAH	Continue to ride on verbal basis until further advice from G. A. H. Up 10-1-32
3-18-32	WAH	Location no longer desirable. Structure removed. Cancel imme- diately. STRUCTURES REMOVED — CHECK FOR REBUILD OR CANCELLATION WAH H Up 4-21-32

*This item shown in red ink on card.

[Stamped on back of card] CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 164-D. Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 164-E in evidence is in words
and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 164-E.]

[Crest]
 Foster and Kleiser
 COMPANY

LOCATION Foothill Blvd. 1-1/2 Mi. E. County Hospital
 LEGAL

OWNER J. F. WALTERS
 218 Kentucky St., Vallejo

ADDRESS ~~R. F. D. Box 213, San Leandro.~~
 AGENT

LEASE NO. 777

CITY

CLASSIFICATION HWY

PHONE

	Amt.		
Date	Offered	By	Remarks
5-4-22	15.00	EAD	10 yrs. from 3-21-22 @ 15.00 yr. Form B Transferred to Lease No. 2443 STRUCTURES REMOVED — CHECK FOR REBUILD OR CANCELLATION OK HHW H Up 10-1-28

[Stamped on face of card] CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 164-E. Filed 12/21 1934 R. S. Zimmerman,
 Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: This is the letter that I received from Foster & Kleiser Company referred to on the card under date of July 28, 1927.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 164-C in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 164-C.]

[Crest]

Foster and Kleiser
— COMPANY —
ADVERTISING

22nd and Market Streets
Telephone Lakeside 8760

Oakland, Cal. June 1, 1928

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

Gentlemen:

At the present time, you are maintaining two 5x8 displays on Foothill Boulevard, NL, near Death Curve, owned by Mr. Walters. We have had this property under lease for several years and would ask that you remove your signs within five days from receipt of this notice.

(Testimony of Charles H. King)

If these signs are not down within this time, we shall have our men remove them.

Very truly yours,

FOSTER AND KLEISER COMPANY

H H Walters

H. H. Walters

LPG:RW

Manager Lease Department

OAKLAND BRANCH

No. 5673-C. Special Site Sign Co. vs. Foster & Kleiser
Plf Exhibit No. 164-C. Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: After the purchase of the Carter System by Foster & Kleiser, as I recall, they took the Carter board down. They did not build another one in its place. To my knowledge they never built on that location. We took our boards down after the receipt of this letter from Foster & Kleiser; that was some time in the latter part of 1927. I thought at that time that we had a lease on the premises. We moved because they threatened to tear our signs down and we wanted to save the signs. We didn't think we could make any progress in a fight because we knew what they would do. They would take them down and there would be nothing for us to do but go into court or get off. I did not receive any communication either through Cecil Day or Mr. Walters.

Q What was the value of that site, Mr. King?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on

(Testimony of Charles H. King)

the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further ground that the plaintiff voluntarily surrendered its leasehold rights.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 127.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value of that site was \$168.

Witness continuing: During the recess I made a further examination of this record in the Swain case. On the site about two miles north of Stockton or at least on one of the sites on the Swain property, our board had been removed in 1926 so that passes out of this case. That is covered by the leases that are in evidence as Plaintiff's Exhibits 161-A and 161-B in evidence. According to Plaintiff's Exhibit 161-C in evidence our term would have extended down to 1931 if we had stayed on the property. This copy of a letter dated June 27, 1930 is the letter by which I sent Plaintiff's Exhibit 161-D in evidence to Mrs. Swain. I signed that.

The letter referred to by the witness was thereupon received in evidence as Plaintiff's Exhibit 161-G in evidence and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 161-G.]

June 27, 1930.

Mr. John A. Swain,
336 West Acacia St.,
Stockton, Calif.

Dear Mr. Swain:

We are enclosing herewith Advertising Privilege blanks in duplicate covering the Olive Oil sign which we maintain on your property. As our present contract with you is now quite old, we have made out this renewal agreement, which is on exactly the same terms as before.

We request you to kindly sign and return one copy to us, in the self-addressed, stamped envelope which we are enclosing for your convenience. The other copy is for your records.

Immediately upon receipt of one signed copy of this agreement, we will mail you check for \$15.00 in payment of rental for the coming year, May 13, 1930 to May 13, 1931.

Thanking you for your kind and prompt attention, we remain

Yours very truly,

SPECIAL SITE SIGN CO.,

BY

CHK-MSM

GENERAL MANAGER.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 161-G Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: Our sign was taken down shortly before expiration, as far as I know. I don't know exactly when it was taken down. We sent our crew up to get it and they returned without it. The notation on this lease, "Lost at expiration May 1, 1930," means it was lost; that the lease and the sign were lost. Mrs. Swain refused to renew and shortly before our lease ran out, our sign disappeared. I had a conversation with Mrs. Swain about renewing this lease before its expiration.

Q BY MR. GLENSOR: What was the conversation?

MR. CLARK: That is objected to as incompetent and hearsay.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 128.

A. I wanted to renew the lease and she said that her husband, prior to the expiration of the other lease, had arranged with Foster & Kleiser to give them the lease, and since that time they had convinced her that she had better give them the lease on this one also. She would not renew with me.

Q. What was the value of the site, Mr. King?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his

(Testimony of Charles H. King)

formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further grounds that plaintiff had no legal estate in the property, its lease having expired, and that the value of the site on the failure to renew is purely speculative.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 129.

A According to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$552.

Witness continuing: I recall the Peters property on East 14th near the County Hospital Road.

MR. CLARK: I object to any testimony on damages with reference to this location on the ground that it is barred by the statute of limitations.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company excepts and here designates as Exception No. 130.

Witness continuing: We bought the lease from F. B. Heider and the board came with it. This bill of sale dated February 20, 1924 is the document by which we got the site.

The document referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 165-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 165-A.]

BILL OF SALE

For value received F. B. Heider has this day transferred, assigned, set over and sold, and does hereby sell, transfer, assign and set over unto the SPECIAL SITE SIGN COMPANY the following described property, to wit:

Two 10x50' Bulletin Boards situate on property of M. S. Peters on the Northwest corner of Foothill Blvd. and Hospital Road, together with lease pertaining thereto with rental paid for one year.

F. B. Heider

Oakland, Calif.

Dated: 2/20/24

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 165-A Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: According to the check of Peters in the file, marked "For advertising privilege rental from November 1, 1926, to November 1, 1927.", that was the last rental that we paid on the property. We received a letter from Walters, Foster & Kleiser's lease manager, telling us that they had a lease and were building a bulletin there, and had removed our signs and piled them on the property. To my knowledge, when I bought the lease from Heider, the only signs on the property were the ones that I bought from him. I did not know anything about any Foster & Kleiser lease or any other company's lease.

(Testimony of Charles H. King)

Foster & Kleiser Company's office record card covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 165-C in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 165-C.]

[Crest]

Foster and Kleiser
COMPANY

E. 14th NL 800' W. County Hospital Road 500'
LOCATION ~~E 14th LS 1/8 Mi. W. San Lorenzo~~
~~Junct. 50'~~

LEGAL

M. E. SILVA

OWNER OR TENANT ~~M. S. PETERS~~

ADDRESS Box 139, San Lorenzo Junct.

AGENT

LEASE NO. 2139

CITY Oakland

SUR

CLASS ~~HWY~~

PHONE

Am't			
Date	Offered	By	Remarks
9-10-25		RB	3 yrs. from 9-22-24 @ \$30.00 yr. Ann. Carter Adv. Co. Right of Way Contract from M. E. Silva
7- 2-25		LG	10 yrs. from 9-22-25 @ \$30.00 yr. Ann. Form A-1 from M. E. Silva

(Testimony of Charles H. King)

- 9-22-27 LG 10 yrs from 9-22-27 @ 30.00 yr
Ann Form A-1 from M. A. Silva.
- 10-28-32 EAD Letter of cancellation secured ef-
fective 9-22-32. M. E. Silva & M.
R. Silva deceased. Cancellation
letter sign by Thomas P. Silva.
Take down order issued today.
Cancel.
- STRUCTURES REMOVED —
CHECK FOR REBUILD OR
CANCELLATION Up 12-15-32

[Stamped] CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 165-C. Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

MR. GLENSOR: Mr. Clark has consented that I
state, subject to correction, that the Foster & Kleiser
Company bought the Carter Advertising Company accord-
ing to the evidence here, in June, 1925, and that this first
entry on this card is undoubtedly the Foster & Kleiser
record of the lease of the Carter Advertising Company on
the Silva property, which they took over from the Carter
Advertising Company.

Witness continuing: The Carter Advertising Company
were not on the property at the time we bought from
Heider. I made a search for the lease I got from Heider

(Testimony of Charles H. King)

and could not find it. Peters and Silva in this matter were related. They lived in the same house. I don't know just how they were related. They seemed to sign leases for one another.

The letter from Mr. Walters of Foster & Kleiser Company previously referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 165-B in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 165-B.]

[Crest]

Foster and Kleiser
— COMPANY —
ADVERTISING

22nd and Market Streets
Telephone Lakeside 8760

Oakland, Cal. September 11th, 1927

Special Site Sign Company,
3225 Louise Street,
Oakland, California.
Attention: Mr. Chas H. King

Gentlemen:

RE: E. 14th LS 1/8 Mi. W. San Lorenzo Junction

We note that you are maintaining an advertising structure on the above described piece of property, on which we are at present building a highway board.

(Testimony of Charles H. King)

As we have an exclusive lease on this property, and are under the impression that we notified you some time ago to remove your board, and as you have not done so and this target interferes with our structure, we are removing same and will leave it on the property in order that the next time your construction crew is out in this vicinity, they can pick it up.

Yours very truly,

FOSTER AND KLEISER COMPANY

H H Walters

H. H. Walters

HHW:NEB

Manager Lease Department

OAKLAND BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 165-B Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: They built on the property and we picked up our signs and re-erected them. We never had any trouble with Peters or Silva or anyone purporting to be the landlord or representative of the landlord on this property. The only notice we ever got to move off the property was the one we received from Foster & Kleiser. Our rent on that property was \$24, the amount shown on the check.

We had two boards on the property one 4 by 6 and one 6 by 10.

Q What was the value of that site, Mr. King?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula, is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further ground that there is no showing that plaintiff had a lease on the property at that time.

MR. GLENSOR: In order to meet the objection that plaintiff did not have a lease on the property at the time it was lost, I offer in evidence a rental check showing that the rent was paid to November 1, 1927.

The check was thereupon received in evidence and marked Plaintiff's Exhibit 165-D in evidence. A true and correct reproduction of said Plaintiff's Exhibit 165-D follows:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 165-D.]

[Check]

[Central National Bank Cut]

SPECIAL SITE SIGN CO.
3225 LOUISE STREET

No. 8326

Oakland, California NOV 18 1926 192....

Pay to the order of M. S. Peters \$24 00

INSURED TWENTY FOUR DOLLARS Dollars
SPECIAL SITE SIGN CO.

Charles H. King Jr
Gen'l Manager

[Stamp illegible]

To Central National Bank Oakland, California 90-4

This check is issued in payment of items as per state-
ment following. The endorsement of payee on back will
constitute a receipt in full

Rental under Advertising Privilege 11/1/26 to 11/1/27.

[Perforated stamp] Paid 11-22-26 90-4

[Endorsed]: M. S. Peters By M. L. Silva

384 Pay to the order of Fourteenth and Broadway
Office The American Bank OAKLAND, CAL. A.
SUTHERLAND,

PAID THROUGH CLEARING HOUSE NOV 23
1926 BROADWAY BRANCH AMERICAN BANK
90-3 OAKLAND, CALIF.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 165-D. Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

THE COURT: The objection will be overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 132.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$288.

MR. CLARK: That is for six years?

A Yes, sir.

MR. CLARK: On a six-year basis?

A Yes, sir.

Witness continuing: We had a location on the Lagomarsino property on the Los Angeles-San Francisco Highway between Holy Cross Station and Baden. That is in the same general vicinity as the Arata and Hamlin properties.

MR. CLARK: Plaintiff claims that property was lost in 1922 and I object to any testimony on damages with reference to this location on the ground that it is barred by the statute of limitations.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 133.

(Testimony of Charles H. King)

Witness continuing: I have not been able to find our lease on this property. We had one 10 by 50 foot bulletin and one 16 by 50 foot bulletin on the property, both advertising the Patton Paint Company. From this check in the file dated April 20, 1920 which shows payment of sign-board rental from May 12, 1920 to May 12, 1921, \$12, I recall that the amount of rent we were paying for that property was \$12. I also recall the term of the lease; it was a five-year lease.

My recollection is that the lease is for one year and five. I don't recall when that lease began but from another check in the file dated May 6, 1919, I think that must have been the beginning of the lease.

Four Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibits 166-C, 166-D, 166-E and 166-F in evidence, respectively. Said Plaintiff's Exhibit 166-C in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 166-C.]

[Crest]

Foster and Kleiser

COMPANY

E & W sides

LOCATION St. Hwy WL 1/ Mi. S. Holy Cross

OWNER Henry Cowell Lime & Cement Co.

ADDRESS 2 Market St.

AGENT E. W. McLellan. 439 Natoma

NUMBER 1354

CLASSIFICATION Highway

PHONE

TRANSFER FILE

Date	Amt. Offered	By	Remarks
	500.00		3 yrs. from 9-1-20 at 125.00 yr covering 4 locations.
7/18/21			Memo to Lyle Abrahamson to clean snips and paint pump house.
12/19/22		JJF	Ownership OK.
7/25/23			Ownership verified. OK ck.

(Testimony of Charles H. King)

- 11/ 5/23 EHD Many early calls on Mr. G. lately.
Very difficult to see him.
- 11/15/23 EHD Saw Mr. G. for first time. Ex-
cused himself for long delay & req.
I. see him 11/20.
- 11/27/23 EHD Mr. G. kept me waiting two hrs.
& then put off until 12/4.
- 12/18/23 EHD Many calls on Mr. G. lately. Al-
ways too busy or does not keep
appt. Now req. I see him after
1st of yr. 1/2/24.
- 1/ 3/24 EHD After waiting 1 hr. Mr. G. agreed
to see me 1/8/24. 1/7/24
- 1 /15/24 EHD End. to sec. better lease. Mr. G.
believes we are paying more for
other highway locations. Expects
increase. Told him this rental was
unusually large & increase out of
question. Will not sign up until
9/1/24
- 9/ 1/23 EHD 1 yr. from 9/1/23 @ \$500.00 yr.
S/A form B. (cov. 4 locations)
- 7/18/24 Form letter returned. Ownership
OK.

[Stamped]: FEB 25 1925 Class C-Yr. to Yr. or 1
Yr. Lease Contact At Least Every 6 Mos.

(Testimony of Charles H. King)

Date	Amt.	Offered By	Remarks
9/18/24		EHD	Will look over prop. & advise 10 days.
10/ 3/24		EHD	Has not had time to look over prop. as yet. 10/15 Then he requested/clean, Linl*6....
11/ 7-25		EHD	Many calls lately, no contact.
11/17/24		EHD	Waited 2 hrs. to see W. H. G. Then he requested I see him Friday a. m. as wants to look over location.
2/12/25		EHD	Insists must look at location before discussing.
2/24/25		EHD	Cannot see W. H. G. before 3/3.
[Stamped]: FEB 25 1925 Class C-Yr. to Yr. or 1 Yr. Lease Contact At Least Every 6 Mos.			
3/18/25		EHD	Many calls lately. No contact.
3/30/25		EHD	Requests call later in week.
5/ 8/25		EHD	Deld ck. to 9/1/25 Mr. Dougery to try to get action, no lease
6/ 9/25		EHD	Mr. George still wants to look over property before signing.
6/26/25		EHD	Same as above
8/ 4/25		EHD	Many calls, no contact 8/24
[Stamped]: OCT. 29 1925 Class C-Yr. to Yr. or 1 Yr. Lease Contact At Least Every 6 Mos.			
9/3/25		EHD	Req. Call again 1st of wk.
9/23/25		EHD	Have tried to see W. H. G. for over 1 yr still says wants to look at prop. before does anything

(Testimony of Charles H. King)

11/10/25 EHD Will try to see me in few days

11/23/25 EHD 1 yr from 9/1/25 @ \$500.00 yr.
S/A Form "B" from I. M. & H. E. Cowell By W. H.
George

2/9/26 EHD George advise is selling property on
West side of Hwy. Will ck. up whether boards on this
piece.

2/10 EHD Sale to close about 3/15 George says
wants same rent for space that is left. Told him could
not be done.

2/11 EHD McC of Von Rhein Co. cannot give new
owners name until deal is closed. 2/22

2/24 Cannot give names yet. EHD.

2/25-26/ EHD Being sold to E. W. McLellan -
Nurseyman at Burlingame. Expects title to pass next
week. He will be away until about 3/22 at which time he
will consider contract. Made no quot. 3/15

3/17 EHD Phoned McLellan Jr. who says McC will
not return until 3/29.

3/29 EHD McC also taking title to part of property
on E side of Hwy. requests call again Wed. Will have
survey and induce in some lease.

[Stamped on face of card]:

SEE NEW CARD MADE UP.

No. 5673-C. Special Site vs. Foster & Kleiser. Plf
Exhibit No. 166-C. Filed 12/21 1934. R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 166-D in evidence is in words
and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 166-D.]

[Crest]

Foster and Kleiser
COMPANY

CITY S. F. CLASS Hwy. LEASE NO. 1354

LOC. S. F.-L. A. Hwy. LS $\frac{1}{4}$ Mi S Holy Cross

LEGAL

LOC.

LEGAL

OWNER I. M., H. E. & S. H. Cowell by W. H. George

ADDRESS 2 Market St., S. F.

Am't		
Date	Offered By	Contact Data
(Old Card in Transfer File)		
*10/27/27	EHD	2 yrs. from 11/1/27 @ \$250.00 yr. - 4-A Form A-1 from I. M., H. E. & S. H. Cowell by W. H. George, Atty. in fact.
6/12/28	EHD	Many calls last few months—difficult to see W. H. George.
7/ 2/28	EHD	Delivered check to Mr. Dougery less unearned of \$95.00; will take up with W. H. George.
10/15/28	EHD	Cult. Call. All OK.
2/26/29	EHD	Mr. George claims portion of prop. sold to E. W. McLellan Co. now under lease #8294; was sold sub-

(Testimony of Charles H. King)

ject to existing lease and Mr. L had no right to lease as George had never cancelled our lease with Cowell Co. Will take up with attorney, and advise.

8/14/29 EHD Req. call nearer anniv. re renewal.
Up 9/15

9/11/29 EHD Left lease for signature by W. H. George.

9/11/29 EHD Req. call 1st of week.

9/18/29 EHD Will have lease signed first of week. 9/25

10/ 2/29 EHD Many calls lately. Too busy to take up.

10/ 7/29 EHD Has been too busy to sign lease as yet. 10/15

* These entries typewritten in red.

Date	Am't Offered	By	Contact Data
10/22/29		EHD	Several calls lately—too busy to take up. 10/29
11/14/29		EHD	Calling here regularly—Mr. George continues to delay signing lease. 11/20
11/21/29		EHD	Just going out of town—too busy to sign lease. 11/27

(Testimony of Charles H. King)

- 12/11/29 EHD Many calls lately—Secty. trying to get lease signed.
- 1/13/30 EHD Mr. G. now says will phone & make app't.
- 1/23/30 EHD Unable to see Mr. George as yet.
- 2/ 3/30 EHD Cannot take up before 3/18
- 7/ 9/30 EHD Have called here at least weekly. WHG. requests call 7/16
- 12/26/30 EHD Many calls last few months. Difficult to see WHG. up 1/5
- 6/ 9/31 EHD Have endeavored at least weekly to contact Mr. George. Ride on continuation clause. Up ~~7/15/31~~
- *10/29/31 "Class C"—Yr. to Yr. or 1 Yr. Lease-Contact At Least annually Up 11/1/31
- 9/24/31 EHD Many attempts to see Mr. George lately.
- ~~10/23/31~~ EHD Unable to see W. H. G. as yet.
- 10/23/31 EHD Mr. G says will take up matter next few days.
- 11/ 2/31 EHD Unable to see W. H. G. as yet.
Up 11/1

(Testimony of Charles H. King)

5/25/32	EHD	Many calls last few months. Mr. G. keeps promising to clear up matter but fails to do so. 5/31/32
7/ 9/32	EHD	Mr. George away until latter part of next week 7/19/32.
8/22/32	LWC	Letter to W. H. George asking for reduction from \$250.00 to \$125.00 per year. Up 9/10/32.
10/18/32	LWC	Letter to W. H. George asking for answer to letter of 8/22. Up 10/1/32 (See lease env.) Up 11/1/32
12/14/32	LWC	Letter to George asking answer of 8/22.
1/20/33	LWC	Letter to George req. decision at earliest possible date Up 2/1/33
2/15/33	LWC	Hold rental. Up 4/1/33.
2/23/33	EG	Rental paid to 8/1/32-check 8/1/32 - 11/1/32 being held. Up 11/1/33
8/31/33	EHD	L. W. C. suggests let ride as is for time being. Up 11/1/33

No. 5673-C. vs. Special Site Plf. Exhibit No. 166-D
 Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross
 Deputy Clerk

Said Plaintiff's Exhibit 166-E in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 166-E.]

[Crest]

Foster and Kleiser
COMPANY

LS

LOCATION S. F.-L. A. Hwy. ¼ Mi S Holy Cross
East and West Side

LEGAL

OWNER Henry Cowell Lime & Cement Co.
OR I. M., H. E. & S. H. Cowell by W. H. George

TENANT

ADDRESS 2 Market St., S. F.

AGENT E. W. McLellan, 439 Natoma

LEASE No. 1354

CITY S. F.

CLASS Hwy.

PHONE

TRANSFER FILE

Date	Amt. Offered	By	Remarks
11/12/26		KGH	Explained situation to Mr. Weston who thinks we are too late. Will introduce me to McLellan on Monday.
11/15/26		KGH	McLellan said we are too late already leased to Heider, however, made an appointment for Monday. 11/22/26.

(Testimony of Charles H. King)

- 11/22/26 WJH Called & had pleasant interview with McLellan. States leased to Heider for 3 years @ \$750.00 per year. He advised me he had made instructions as to the type of structure also the number. Appears to be quite friendly. up 12/1
- APR 20 1927 Class C-Yr. to Yr. or 1 Yr. Lease Contact At Least Every 6 Mos.
- 12/17/26 EHD Several calls on WHG. Too busy to see me.
- 12/23/26 EHD Req. call after Xmas.
- 12/30/26 EHD Out of town today.
- 1/19/27 EHD Three calls this week. Req. call 1/24.
- 2/ 1/27 EHD Calling every day. No contact.
- 2/ 8/27 EHD Qtd. 200.00 for remaining space. Will not sign until checks over space with Mr. Dougery who is ill at present.
- 2/13/27 EHD Called explained to Mc. Lellan that George would give him credit at \$380.00 from 3/1/26 to 3/1/27. We paid Mc from 12/1/26. He will then owe us difference. Mc

(Testimony of Charles H. King)

will advise if George makes adjustment.

3/16/27	EHD	George <i>rea.</i> call 3/18.
3/18/27	EHD	Too busy to see me.
3/21/27	EHD	Says will see me 3/23.
3/24/27	EHD	Req. call next week.
3/28/27	EHD	Busy to day.
3/29/27	EHD	Same no contact.
4/21/27	EHD	George busy in court for about a week.
5/17/27	EHD	Many calls lately. Always "too busy"
6/ 2/27	EHD	Says will try to see me next week.
6/ 6/27	EHD	Req. call 6/14
10/20/27	EHD	George signed 1 yr. lease @ \$250.00. Not acceptable.
10/21/27	EHD	2 yrs. from 11/1/27 @ \$250.00 yr. - 4/A Form A-1 from I. M., H. E. & S. H. Cowell by W. H. George, Atty in fact.

[Stamped on face of card] :

SEE NEW CARD MADE UP

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 166-E. Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 166-F in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 166-F.]

[Crest]

Foster and Kleiser
COMPANY
E & W Sides

LOCATION St. Hwy. WL 1/4 Mi. S. Holy Cross

LEGAL

OWNER Henry Cowell Lime & Cement Co.

OR

TENANT

ADDRESS 2 Market Street

AGENT

LEASE No. 1354

CITY

CLASS. Highway

PHONE

		Amt.	
Date	Offered	By	Remarks
3/31/26		EHD	George promises to deliver survey to McLellan
4/ 1		EHD	McC wants to get survey too before signing
4/ 5		EHD	Says Westor of Von Rhein Co will have survey ready by 4/8 4/8
4/ 8		EHD	McLellan has received survey but is not in town today.
4/ 9		EHD	Wants to wait until has checked survey suggests see him next week.

(Testimony of Charles H. King)

4/16	EHD	Has not settled with George and will not sign until all straightened out.
4/23	EHD	McC did not come to S F to-day.
4/26	EHD	McC has argument wherein WHG agrees to sell 85 acres. As there is only 86 acres in entire piece WHG trying to back out. Looks like prolonged dispute 5/10
5/ 3	EHD	Endeavoring to get McC to sign option for 5 yrs. at rental not to exceed \$500.00 based upon amt. of property to which he takes title & retroaction to date title passes
5/ 3	EHD	Refuses to sign anything until has clear title. 6/1

Amt.		Date	Offered By	Remarks
				Jr.
5/27/26	EHD			Mr. "C" said on vacation until are waiting for Weston of Von Rhein Co. to return & settle deal. Will be about 30 days.
6/21/26	EHD			No change in condition. 7/1

(Testimony of Charles H. King)

- 7/12/26 EHD Status same. Title not passed. 8/1
- 7/31/26 EHD Mc C l l e l l a n hopes to get title
straighten out next month 8/25
- 8/26/26 EHD McLellan's secty. under impres-
sion title now being straightened
out. McL. not in S. F. today.
- 9/15/26 EHD McL. will not be in town this
week.
- 9/20/26 EHD Mr. Dougery of Cowell Co. ad-
vises title has not passed.
- 10/11/26 EHD W. H. George requests checks be
mailed to Cowell Co. Says will
prorate with tenant when title
passes. 11/1 WJH
- 11/ 8/26 EHD McC. says title has passed. De-
mand \$500.00 yr. his portion of
property for T. D. wants answer
11/10
- 11/10/26 EHD Called on Mr. McLellan to quote
\$500.00. He showed me letter
advising us had leased to Heider.
Said they offered \$750.00 for 1
yr lease & he accepted as he knew
it would be practically impossible

(Testimony of Charles H. King)

to get us to pay that much unless he told us of competitive offer & even then it would have taken several days discussion. Also said did not mention our quotation to Heider.

11/16/26 EHD W. H. George refuses to sign for remaining portion until we have closed with McLellan.

[Stamped on face of card]:

TRANS. TO NEW CARD.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 166-F Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: After this lease which was referred to in the office record card under date of July 18, 1921, I had a conference with Foster & Kleiser about the maintenance of my bulletins there. This letter dated October 24, 1921 from Foster & Kleiser refers to an oral arrangement that had been made:

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 166-B in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 166-B.]

San Francisco

Los Angeles

[Crest]

Seattle

Foster and Kleiser

Telephone

Portland

— COMPANY —

Market 10

Oakland

OUTDOOR ADVERTISERS

Tacoma

273-295 Valencia Street

San Jose

JJ

Bellingham

San Francisco, Cal

Vallejo

October 24, 1921

Santa Barbara

Special Site Sign Co.,

308 $\frac{1}{2}$ 12th St., Oakland

California

Attention, Mr. C. H. King.

My dear Mr. King:

We have recently noted that one of the bulletins which we permitted you to maintain for the Patton Paint Co. on the property of the Cowell Lime & Cement Co. opp. Holy Cross, has been coated out and a for sale sign painted thereon.

It was our understanding that as soon as the present contract for the Patton Paint Co. expired you would arrange to remove the same and, as previously advised, it is our intention to erect one of our latest type bulletins on

(Testimony of Charles H. King)

the location mentioned, and we therefore request that you have the same removed at your earliest convenience.

Thanking you for your usual prompt attention, we are,

Very truly yours,

FOSTER AND KLEISER COMPANY

By D. R. McNeill J.

San Francisco Manager.

DRMc:VBS

CHK

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 166-B Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: I don't recall the oral arrangement very well but I do recall that the conversation was with Mr. McNeill and that it was to the effect that they had gotten a lease from the Cowell Lime & Cement Company, the owner of the property, and that they would allow me to stay on the property until our contract with the advertiser expired, and we were to pay \$100 annually for the privilege. We took our lease from the tenant, who was Lagomarsino. At that time there were no other advertising structures on the property. I had no knowledge of any other existing lease. I had no difficulty at

(Testimony of Charles H. King)

all with either the tenant or the owner about any structures being on the property. At the time I had this conference with Mr. McNeill in which this arrangement was made, the Patton Paint bulletins were being displayed on those boards. That had approximately a year to run. It was shortly after that conference that the board was painted out, as referred to by Mr. McNeill in the letter, Plaintiff's Exhibit 166-B. We painted it out because the order to maintain that bulletin was terminated by the Patton Paint Company. As I recall, after this letter from Mr. McNeill, I removed one of our boards and sold the other to them. On July 18, 1921, the date of the Foster & Kleiser lease, I couldn't say whether there were any blanked out boards of the Foster & Kleiser Company in that general vicinity.

Q What was the value of the Lagomarsino site?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further ground that any testimony on damages with reference to this location is barred by the statute of limitations.

THE COURT: Overruled.

(Testimony of Charles H. King)

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 134.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$1,800.

Mr. Glensor thereupon offered in evidence a lease from Herman Curcio to Special Site Sign Company, dated October 24, 1923, covering property located at 2252 East Twelfth Street. Said lease was received in evidence and marked Plaintiff's Exhibit 167-A in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 167-A.]

Hotel Lakeside 4x6'
Alameda Rug Wks " Oakland

Oct 24 1923

In consideration of 12.00 payable when sign is erected
.....hereby lease to undersigned, lessee, the space 6x10
FENCE
WALL of building located at 2252 E 12 St for advertising purposes for a period of 1 year from date with privilege to said lessee to further use said space for a like consideration for five succeeding periods. Should lessee

(Testimony of Charles H. King)

desire to cancel this contract, lessee shall give lessor 30 days' written notice before end of any term.

	Owner
	AGENT
	Herman Curcis TENANT
By Chas Batten	Address 2252 E - 12th St
Lessee	(Over)

Paid check #4843 11/2/23 Oakland

[In red pencil writing on face]:

Removed
3/25/27

No 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 167-A. Filed 12/21 1934. R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Two Foster & Kleiser Company's office record cards on property described as East 12th north line 232-1/2 feet west of 53rd, being the same property as that described in the lease, were received in evidence, read to the jury, and marked Plaintiff's Exhibits 167-C and 167-D in evidence. Said Plaintiff's Exhibit 167-C in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 167-C.]

R✓

[Crest]

Foster and Kleiser
COMPANY

E 12th NL 232.50 W. 23rd Ave 140x150

LOCATION ~~E 12th NL 250' E 22nd Ave. 140'~~LEGAL ~~Lot. . . . Blk 107 E0~~ (Metes & Bnds) Block
106, Rancho San AntonioOWNER ~~MRS. FOULKES~~ ED. MARKOVITS,
C/o A. Bercovich Co.ADDRESS ~~2610 E 14th St., Oakland, 732 Rosal Ave.~~
AGENT 127 2nd Street, Oakland

LEASE No. 2769 EXTRA TIGHT

CITY Oakland

CLASSIFICATION SUR

PHONE

	Amt.		
Date	Offered	By	Remarks
3- 6-24		LG	Getting 35.00 per mo. from pottery co. for storage. Gave 15 day option to R. E. CO. to sell. May be able to rent frontage to us.

Up 5-1-24

(Testimony of Charles H. King)

- 7-14-32 WAH Above arrangement confirmed by
letter from Markovits today.
- 10-22-32 WAH Letter to Markovits today offering
\$16.25 per month.
- 10-27-32 WAH *Rental reduced to \$240.00 yr
12/A until we find a subtenant.
New arrangement will be made at
that time.
- 1-10-33 WAH Preparing sub-lease for second
hand lumber yard tenant, F. C.
Barr, 3467 Davis Street, Oakland
(Fruitvale 5701-J) to become ef-
fective 2-1-33 @ \$50.00 per month
the first year and \$75.00 per
month the remaining two years.

* Entries typewritten in red.

[Stamped on face of card]:

EXTRA TIGHT

TRANSFERRED to NEW CARD 1-16-33 NEB

No. 5673-C. Special Site vs. Foster & Kleiser. Ex-
hibit No. 167-C Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 167-D in evidence is in words
and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 167-D.]

77

[Crest]

Foster and Kleiser
COMPANYCITY Oakland CLASS SUR ASSIGNED TO
LEASE NO. 2769

LOC. E 12th NL 232.50 W 23rd Ave 140x150
LEGAL Block 106, Rancho San Antonio (metes and
bounds)

LOC.
LEGAL

OWNER ED MARKOVITS ESTATE
ADDRESS C/o A. Bercovich Co. 127-2nd St. Oakland

	Amt.		
Date	Offered	By	Contact Data
1-16-33		NEB	See old card in trans.file.
*7-30-31		WAH	5 yrs from 8-15-31 @ \$420.00 yr 12/A Form E from Ed Marko- vits, owner (non-community) 1-C
1-10-33		WAH	Preparing sub-lease for second hand lumber yard tenant, F. C. Barr, 3467 Davis Street, Oakland (Fruitv. 6107-J) to become effec- tive Feb. 1, 1933 @ 50.00 per

(Testimony of Charles H. King)

month the first year and \$75.00 per month the remaining two years.

- 1-16-33 WAH Lease as outlined in previous entry signed by F. C. Barr and his wife, Elva G. Barr. This represents a total saving of \$420.00 per year effective as of Feb. 1st, 1933.
- *1-16-33 NEB Rental to Markovits increased to \$420.00 yr effec 2-1-33 account location sub-leased @ \$600.00 per year.
- 7- 5-33 WAH Ed Markovits deceased. Son, Joe Markovits, administrator, requests checks be made payable as follows:
Edward Markovits Estate

* These entries typewritten in red.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 167-D Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

A letter from Foster & Kleiser Company to Special Site Sign Company, dated February 15, 1927, was thereupon received in evidence and marked Plaintiff's Exhibit 167-B in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT NO. 167-B.]

[Crest]

Foster and Kleiser

—COMPANY—

KK.

ADVERTISING

22nd and Market Streets

Telephone Lakeside 8760

Special Site Sign Company, OAKLAND, CAL.
3225 Louise Street, February 17, 1927
Oakland, California.

Gentlemen:

We note that you are maintaining two small paint structures on property known as 2250 E. 12th Street which takes in a frontage of 140' on which property we hold an exclusive advertising lease.

We would ask you to kindly remove these boards within five days from date of receipt of this letter as we desire to use the property.

In the event that they are not removed by that time we shall remove the boards and hold them in our yards awaiting your instructions.

Yours very truly,

FOSTER AND KLEISER COMPANY

H H Walters

H. H. Walters

Lease Manager

WH:RW

OAKLAND BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 167-B Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: I don't know who the Ed. Markovits was who is referred to on the office record card under date of January 7, 1927. We did not remove our boards immediately after we received the letter, Plaintiff's Exhibit 167-B in evidence; a few days probably elapsed. This note here in my file was made by me. It indicates that the structures were removed on March 25, 1927; that is right. We were paying \$12 for the property. Our lease was in effect and our structures were on the property at the time the lease was taken by Foster & Kleiser. Nevertheless, we moved off. In a number of these cases where I had a lease that was apparently all right, I removed my structures on demand by Foster & Kleiser. I thought that it was something similar to a man in a rowboat trying to fight a battleship. I could not afford to take the time and I did not see that I would get anywhere if I did fight it out with them. It would take all my time and I had to devote my time to my business. I didn't have any leasemen. I did my own leasing or I had a salesman do my leasing and they were occupied most of the time doing selling. I could not be at all points of the compass at one time.

Curcio was in possession of that property. He was on the premises. He lived there in an old residence. I took our lease from him. I did not have any trouble with Curcio or anybody else except Foster & Kleiser about the lease.

Q BY MR. GLENSOR: What was the value of the lease?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on

(Testimony of Charles H. King)

the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the grounds that it has not been shown that Special Site Sign Company's lessor had any right to lease the property and on the further ground that it is barred by the statute of limitations. I also move to strike out all the testimony that has been given with respect to the matter.

THE COURT: Objection overruled and motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 135.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$168.

Witness continuing: That was a city location. We had two 4 by 6 painted bulletins on it. It could have been developed for a de luxe illuminated board. Charles Batten was our construction foreman. He signed the lease that we claimed under. He acted as our agent. He secured the lease for us. He was employed by us.

I recall the Hook Ranch in Santa Cruz County.

A lease covering the property referred to by the witness, dated January 14, 1920, was thereupon received in evidence and marked Plaintiff's Exhibit 168-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 168-A.]

G & J.

Oakland, Cal., 1/14 1920

In Consideration of Twenty five dollars—(\$25.00) Dollars per year, payable in yearly installments in advance, the undersigned, Lessor, hereby leases to SPECIAL SITE SIGN CO., of 308 Twelfth Street, Oakland, California, Lessee, its successors or assigns, the premises (with the privilege of access through and upon same) known and described as follows, to-wit:

On the property of J. W. Hook situated on Dry Creek R'd. bet. Los Gatos and San Jose as agreed.

for the exclusive erection and maintenance of advertising signboards thereon. Rent to commence when the signboards are erected on said property, and on like terms for the five (5) succeeding years, unless terminated by the Lessor as hereinafter provided, or terminated by the Lessee giving ten (10) days' written notice of termination of this Lease, and removing said signboards from said property.

It is Expressly Agreed, that the Lessor may order the advertising signboards removed at any time by giving the Lessee thirty (30) days' notice in writing, in case the Lessor sells the premises, or improves same by erecting a building on said premises, or leases said premises for other than advertising purposes, and upon consummation of said sale, or improvement thereon, evidenced by passing of Deed or Building Permit, respectively, the Lessor shall

(Testimony of Charles H. King)

refund to the Lessee the rent paid in advance, pro rata, from the time of the removal of its boards. In case the boards should be removed pursuant to any such notice, and the proposed sale or improvement should not be made forthwith, then the Lessee shall again have the exclusive right to replace its boards on said premises, and this Lease shall continue in force for the term above mentioned.

Should the View of the boards become in any way obstructed, the Lessee may terminate this Lease and the Lessor shall refund to the Lessee the rent paid in advance, pro rata, for the unexpired terms above mentioned.

All Boards placed on the premises under this Lease shall remain the property of the Lessee, and may be removed by them at any time.

J. W. Hook

Lessor.

#89 Fairview Plaza.

Address Los Gatos Cal.

Tel: Los Gatos 122-R

SPECIAL SITE SIGN CO., Lessee,

By Charles H King Jr.

[On back in pencil]: G & J Tires—

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 168-A Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

A lease dated September 30, 1924 covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 168-B in evidence, and is in words and figures as follows, to-wit:

Said exhibit was thereupon read to the jury.

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 168-B.]

Cr TWB

J 149

Goodfellows

[Crest]

OAKLAND

SPECIAL SITE SIGN CO.

CALIF.

ADVERTISING PRIVILEGE

Memorandum of Agreement, made this 30th day of Sept 1924 by and between J. W. Hook, the party of the first part, and SPECIAL SITE SIGN CO., party of the second part.

Witnesseth, That for the consideration hereinafter named, to be paid by second party to first party, the said first party hereby grants to said second party the exclusive use of the following described premises, with free access and entrance to and upon same at any and all times during the term hereof:

San Jose-Los Gatos highway, about 1 mile South East of Cambell situated in the ~~City of~~ Cambrain School District State of Cal. for a period of ~~five~~ ^{one} years from Jan 14th 1925 to Jan 14th 1926 for the purpose of constructing and maintaining painted, printed, or illuminated signs

(Testimony of Charles H. King)

or devices for advertising purposes, including the placing and maintaining of devices for the illumination of such signs with necessary connections therefor. In consideration of which the party of the second part agrees to pay the party of the first part the sum of Twenty-five no/100 Dollars, payable in advance for each year of said term during which said premises are used for said advertising purposes.

This agreement shall continue in force from year to year after the term hereof unless terminated at the end of such term, or any such additional year, upon written notice of either party served not less than thirty days before the end of such term or additional year; provided, however, that if the said property is sold, or the possession thereof required by the first party for the purpose of building upon, or is leased for other than advertising purposes, then this contract shall terminate, and the first party shall refund to the second party the unearned portion of rent paid by the second party, if any, and in this event the second party shall remove all signs and connections upon ten days' written notice from the first party. In the event that the said premises shall be altered or changed in such manner that the advertising value thereof, is destroyed, or impaired, or should the view of such premises become obstructed or the use thereof prevented by law, the second party shall have the right to cancel this agree-

(Testimony of Charles H. King)

ment and have a refund of the unearned portion of rent already paid, if any.

The party of the second part is hereby authorized to remove any and all signs of any other person or corporation on said rented premises, and shall be the owner of and have the right to remove all signs, material, and equipment placed on said premises under this agreement.

It is expressly understood that SPECIAL SITE SIGN CO. is not bound by any stipulations, representations or promises not printed or written on this contract.

Signed

J W Hook { Owner
 { Tenant
 { Agent

Address Los Gatos
89 Fairview

Accepted by SPECIAL SITE SIGN CO.

Per T W Burke

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 168 B. Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

A receipt for rental of the above described property was thereupon received in evidence and marked Plaintiff's Exhibit 168-C in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 168-C.]

Received of Special Site Sign Company the sum of Thirty Dollars covering sign locations rentals, as follows:

Good Fellows Grill sign 1/14/26 to 1/14/27	25.00
Cohen Furn. Co. Sign " "	5.00
	\$30.00

In consideration of the above the provisions contained in that certain advertising privilege between J. W. Hook and the Special Site Sign Company for the term Jan. 14, 1925 to 1926 are hereby extended for the period Jan. 14, 1926 to 1927.

This receipt to be attached to and become a part of aforesaid lease.

J. W. Hook

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 168-C Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

A lease dated January 14, 1928 covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 168-D in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 168-D.]

A-1

89 Fair View Plaza

[Crest]

OAKLAND

SPECIAL SITE SIGN CO.

CALIF.

No.

City Los Gatos State California Date January 14, 1928

In consideration of twenty five (\$25.00) Dollars per year, payable yearly in advance, the undersigned Lessor hereby leases to Special Site Sign Company, Lessee, the exclusive use of the premises (with free access to and upon same) described as property on San Jose-Los Gatos highway, at Dry Creek & Known as the Stock Ranch situated in the City of..... County of Santa Clara State of California for a period of ten years from date, 19.... for the purpose of erecting and maintaining painted, printed, or illuminated advertising signs, including necessary structures, devices and connections.

In the event said property is improved by erecting thereon a permanent building, this lease shall thereby be terminated; the Lessee shall, upon the return to it of all rent paid for the unexpired term of this lease and upon thirty days' written notice from the Lessor that such permanent improvements are to be made, remove said signs and structures from said property; in the event such improvements shall not be commenced within thirty days after the removal of such signs and structures, the Lessee shall have the right to re-enter said premises and reconstruct said signs and structures.

(Testimony of Charles H. King)

In the event a portion only of the property is improved by erecting thereon a permanent building, the Lessee has the option of using the remaining portion on the same terms as herein provided except the rental shall be proportionately reduced.

If the view of the property or advertising signs is obstructed, or impaired, or the use of such signs is prevented by law, the Lessee shall have the right to cancel this agreement and receive all rent paid for the unexpired term of this lease, by giving the Lessor notice in writing of such obstruction, impairment, or prevention of use.

In the event a portion only of the view of the property or advertising signs is obstructed, or impaired, the Lessee has the option of using the remaining portion on the same terms as herein provided, except the rental shall be proportionately reduced.

After the term hereof, this lease shall continue in force from year to year unless terminated at the end of such term, or any additional year thereof, upon written notice of termination by the Lessor or Lessee, served not less than thirty (30) days before the end of such term or additional year.

The Lessee shall protect and save harmless the Lessor from all damage to persons or property by reason of accidents resulting from the neglect or wilful acts of its agents, employees or workmen in the construction, maintenance, repair or removal of its signs on said premises.

The Lessee is and shall remain the owner of all signs and improvements placed by it on said property and has the right to remove same at any time.

(Testimony of Charles H. King)

In the event that the Lessee, for the purpose of improving the appearance of said property, shall place or plant gravel, lawns, shrubs or flowers thereon or install water service pipes and fittings for the upkeep of said property, then the Lessee shall at all times be deemed the owner of such gravel, lawns, shrubs, flowers, pipes and fittings and shall have the right to dig up and remove same at any time.

The Lessor represents that he is the $\left\{ \begin{array}{l} \text{OWNER} \\ \text{TENANT} \\ \text{AGENT} \end{array} \right\}$
of the premises above described and has the authority to make this lease. The word "Lessor" as herein used shall include and mean "Lessors."

It is expressly understood that the special Site Sign Company is not bound by any stipulations, representations, or promises not written or printed on this contract. This lease is binding upon the heirs, assigns and successors of both the Lessor and the Lessee.

Signed: Mrs. J. W. Hook

Lessors.

89 Fairview Plaza Los Gatos
Address.

Accepted by SPECIAL SITE SIGN COMPANY,
Lessee.

Per E. R. King.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 168-D Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

(Testimony of Charles H. King)

Foster & Kleiser Company's office record card covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 168-E in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 168-E.]

[Crest]

Foster and Kleiser
COMPANY

Cancel 25 00

CITY S. F. CLASS Hwy. LEASE NO. 6345

See over

LOC. S. F. Sta Cruz Salinas Hwy. LS 4.7 Mi S of Junct.
of Race & San Carlos Sts. San Jose

LEGAL #49 Page 47 Ware Tract

LOC. S. F. Sta Cruz Salinas Hwy LS 4 7/10 Mi S Junct
Race & San Carlos St San Jose

LEGAL #49 Page 47 Ware Tract

OWNER (Mrs.) J. W. Hook

ADDRESS 89 Fair View Plaza, Los Gatos, Calif.

(Old Card in Transfer File)

(Testimony of Charles H. King)

Am't

Date	Offered	By	Contact Data
*7/12/29		KGH	10 yrs. from 6/10/29 @ \$25.00 yr.—Ann. Form A-1 from Mrs. J. W. Hook. (Non-Com.)
2/24/30		M	T. D. 1-50x10 Hwy. Bull. (Blank) per memo CWH 2/11/30 Refile
8/ 7/30		M	Cancel at anniv. 4/1/31
*5/20/31		EG	Rental paid to 6/10/31.
6/22/31		LWC	Letter to Mrs. Hook confirming oral agreement to cancel lease out as of 6/10/31, the date to which rental has been paid. Up 6/10
*6/22/31		HMA	Rental paid to 6/10/31.

[Stamped on face of card] CANCELLED JUN 29 1931

Misc. San Jose-Los Gatos Hwy LS 4-1/10 Mi S Junct
Race and San Carlos St. San Jose

#49—Page 41—Ware Tract

20

(10)*

*These items shown in red on card.

(Testimony of Charles H. King)

IV

[Crest]

Foster and Kleiser
COMPANYLOCATION S/S San Jose Los Gatos Hwy ~~5.3~~ mi. W.
San JoseLEGAL S. F.-Sta Cruz-Salinas Hwy. LS 4.1 Mi S of
Junct. of Race & San Carlos Sts. San Jose

OWNER J. W. Hook (Mrs.)

ADDRESS 89 Fair View Plaza, Los Gatos, Cal.

AGENT LEASE No. 6345 CITY

CLASSIFICATION Highway PHONE

TRANSFER FILE

Date	Am't Offered	By	Remarks
			5
6/ 2/24		EHW	5 yrs. from 6/10/24 @ 25.00 yr. ann. form B
7/ 1/24			Bld. 50x10 Reg. High. "Hotel Vendome"
*7/12/29		KGH	10 yrs. from 6/10/29 @ \$25.00 yr.—Ann Form A-1 from Mrs. J. W. Hook.

[Stamped on card] SEE NEW CARD MADE UP

*This item shown in red on card.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 168-E Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: I think the Hotel Vendome bulletin referred to on the office record card, Plaintiff's Exhibit 168-E in evidence, was our bulletin. This property was on the Santa Cruz-Los Gatos Road which is the principal highway leading down to Santa Cruz. We built a 10x50 highway bulletin on it. Whenever I use the word "bulletin" I refer to a painted bulletin. Foster & Kleiser built a structure on that property at or about the date they took a lease, as shown by the office record card, July 12, 1929. It was about 30 feet from our structure. It shortened the view of our bulletin. After Foster & Kleiser built, our bulletin burned up. I took a prospective customer down to look at it and found a pile of ashes there. Foster & Kleiser's bulletin was not burned. The fire was confined to our board. There was no grass on the ground and it was under some heavy eucalyptus trees. I should say that was about December, 1929, to the best of my recollection. The fire took place after we secured our A-1 lease. That is the best form of advertising lease. It is referred to by Foster & Kleiser in their cards. I did not rebuild because I was informed by Mrs. Hook that the property had changed hands and when my sign was destroyed there was no evidence that I ever had had possession of the property. My A-1 form would have bound the new owner but with the sign gone, I realized I could not hold the new owner. I found out, on investigating Foster & Kleiser's cards, that there was never any change of ownership so far as their cards show. It showed Mrs. Hook still the owner there. We would not have built the same site anyway, but we

(Testimony of Charles H. King)

could have built it in another way there. The card shows that Foster & Kleiser's lease was on June 10, 1929. I believe our structure was on the property at the time that lease was taken. Our leases go back for quite a number of years on that property and we had our structure on there all the time.

Q. What was the value of the Hook leasehold?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 136.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value is \$1,104.

Witness continuing: We had a location known as The Richmond Company property on both sides of San Pablo Highway, north of the town of San Pablo.

A lease from The Richmond Company dated November, 1924 was thereupon received in evidence and marked Plaintiff's Exhibit 169-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 169-A.]

OAKLAND
SPECIAL SITE SIGN CO.
CALIF.

Claremont Hotel

ADVERTISING PRIVILEGE

Memorandum of Agreement, made this 3rd day of March, 4 1927 by and between Richmond Co., Inc., of Richmond, Calif. the party of the first part, and SPECIAL SITE SIGN CO., a corporation of California, with principal place of business at 3225 Louise St., Oakland, Calif.

Witnesseth, That for the consideration hereinafter named, to be paid by second party to first party, the said first party hereby grants to said second party the exclusive use of the following described premises, with free access and entrance to and upon same at any and all times during the term hereof: On De Laveaga Ranch, at gore formed by 23rd St. (or old Highway) and new Highway, at top of Hill situated in the City of Contra Costa County State of California for a period of five years from March 4, 1927 for the purpose of constructing and maintaining painted, printed, or illuminated signs or devices for advertising purposes, including the placing and maintaining of devices for the illumination of such signs with necessary connections therefor. In consideration of which the party of the second part agrees to pay the party of the first part the sum of Fifteen & 00/100 Dollars, payable an-

(Testimony of Charles H. King)

nually in advance for each year of said term during which said premises are used for said advertising purposes.

This agreement shall continue in force from year to year after the term hereof unless terminated at the end of such term, or any such additional year, upon written notice of either party served not less than thirty days before the end of such term or additional year; provided, however, that if the said property is sold, or the possession thereof required by the first party for the purpose of building upon, or is leased for other than advertising purposes, then this contract shall terminate, and the first party shall refund to the second party the unearned portion of rent paid by the second party, if any, and in this event the second party shall remove all signs and connections upon ten days' written notice from the first party. In the event that the said premises shall be altered or changed in such manner that the advertising value thereof, is destroyed, or impaired, or should the view of such premises become obstructed or the use thereof prevented by law, the second party shall have the right to cancel this agreement and have a refund of the unearned portion of rent already paid, if any.

The party of the second part is hereby authorized to remove any and all signs of any other person or corporation on said rented premises, and shall be the owner of and have the right to remove all signs, material, and equipment placed on said premises under this agreement.

(Testimony of Charles H. King)

It is expressly understood that SPECIAL SITE SIGN CO. is not bound by any stipulations, representations or promises not printed or written on this contract.

Signed Richmond Company Incorp { Owner
Tenant
Agent

Lathem J Young V. Pres
Address 6th & Macdonald Ave., Richmond.
Mercantile Trust Bldg.

Accepted by SPECIAL SITE SIGN CO.

Per Charles H. King Jr

Taken off Feb. 8 1928

The Richmond Co., Inc.

CASH RECEIPT No. 2918
Date 3/8/27

Received From Special Site Sign Co Oakland, Calif

Description	Principal Interest	Miscellaneous	Total
Sign Rental		15-	
3/4/27 to 3/4/28			15-

H J W

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 169-A Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

A lease dated January 4, 1927 covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 169-B in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 169-B.]

[Crest]

OAKLAND
SPECIAL SITE SIGN CO.
CALIF.

ADVERTISING PRIVILEGE

Memorandum of Agreement, made this Fourth day of January 1927 by and between The Richmond Co. Inc. of Richmond Calif. the party of the first part, and SPECIAL SITE SIGN CO., a corporation of California, with principal place of business at 3225 Louise St., Oakland Calif.

Witnesseth, That for the consideration hereinafter named, to be paid by second party to first party, the said first party hereby grants to said second party the exclusive use of the following described premises, with free access and entrance to and upon same at any and all times during the term hereof. Between 23rd st (or old Highway) and New highway as at present sign to be north of creek and west of present Highway Display sign on

County of

De Laveaga Ranch situated in the City of Contra Costa State of California for a period of five years from

.....for the purpose of constructing and maintaining painted, printed, or illuminated signs or devices for advertising purposes, including the placing and maintaining of devices for the illumination of such signs with necessary connections therefor. In consideration of which the party of the second part agrees to pay the party of the first part the sum of Thirty dollars (30.00) Dollars,

(Testimony of Charles H. King)

payable yearly in advance for each year of said term during which said premises are used for said advertising purposes.

This agreement shall continue in force from year to year after the term hereof unless terminated at the end of such term, or any such additional year, upon written notice of either party served not less than thirty days before the end of such term or additional year; provided, however, that if the said property is sold, or the possession thereof required by the first party for the purpose of building upon, or is leased for other than advertising purposes, then this contract shall terminate, and the first party shall refund to the second party the unearned portion of rent paid by the second party, if any, and in this event the second party shall remove all signs and connections upon ten days' written notice from the first party. In the event that the said premises shall be altered or changed in such manner that the advertising value thereof, is destroyed, or impaired, or should the view of such premises become obstructed or the use thereof prevented by law, the second party shall have the right to cancel this agreement and have a refund of the unearned portion of rent already paid, if any.

The party of the second part is hereby authorized to remove any and all signs of any other person or corporation on said rented premises, and shall be the owner of and have the right to remove all signs, material, and equipment placed on said premises under this agreement.

(Testimony of Charles H. King)

It is expressly understood that SPECIAL SITE SIGN CO. is not bound by any stipulations, representations or promises not printed or written on this contract.

Signed Richmond Co Inc { Owner
 { Tenant
 { Agent

By L J Young

Address 6th & Macdonald Ave Richmond
 Mercantile Trust Bldg.

Accepted by SPECIAL SITE SIGN CO.

Per Charles H King Jr. Mgr

Taken off Feb 11 1928

The Richmond Co., Inc.

CASH RECEIPT

No. 2700

Date 1/12/27

Received From Special Site Sign Co

Description	Principal	Interest	Miscellaneous	Total
Sign Lease			4 85	
Extension				
11/6/27 to 1/4/28				
H. J. W.				4 85

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 169-B Filed 12/ 21 1934 R. S. Zimmerman,
 Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

A lease dated March 4, 1927 covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 169-C in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 169-C.]

\$3. TWB J 2 6. C.A.H. J 3

[Crest]

OAKLAND

SPECIAL SITE SIGN CO.

CALIF.

ADVERTISING PRIVILEGE

Memorandum of Agreement, made this 6th day of November, 1924 by and between THE RICHMOND COMPANY the party of the first part, and SPECIAL SITE SIGN CO., party of the second part.

Witnesseth, That for the consideration hereinafter named, to be paid by second party to first party, the said first party hereby grants to said second party the exclusive use of the following described premises, with free access and entrance to and upon same at any and all times during the term hereof: In N.E. cor. of field on De Laveaga Ranch, being about 956 feet northerly along state highway from intersection of SW. Cor. of DeLaveaga Ranch with the property of the Flint Land Co. situated in the City of County of Contra Costa State of California, for
one

a period of ~~five~~ years from Date for the purpose of constructing and maintaining painted, printed, or illuminated signs or devices for advertising purposes, including the placing and maintaining of devices for the illumination of such signs with necessary connections therefor. In consideration of which the party of the second part agrees to pay the party of the first part the sum of (\$30.00) Thirty

(Testimony of Charles H. King)

& 00/100 Dollars, payable yearly in advance for each year of said term during which said premises are used for said advertising purposes.

This agreement shall continue in force from year to year after the term hereof unless terminated at the end of such term, or any such additional year, upon written notice of either party served not less than thirty days before the end of such term or additional year; provided, however, that if the said property is sold, or the possession thereof required by the first party for the purpose of building upon, or is leased for other than advertising purposes, then this contract shall terminate, and the first party shall refund to the second party the unearned portion of rent paid by the second party, if any, and in this event the second party shall remove all signs and connections upon ten days' written notice from the first party. In the event that the said premises shall be altered or changed in such manner that the advertising value thereof, is destroyed, or impaired, or should the view of such premises become obstructed or the use thereof prevented by law, the second party shall have the right to cancel this agreement and have a refund of the unearned portion of rent already paid, if any.

The party of the second part is hereby authorized to remove any and all signs of any other person or corporation on said rented premises, and shall be the owner of and have the right to remove all signs, material, and equipment placed on said premises under this agreement.

It is expressly understood that SPECIAL SITE SIGN CO. is not bound by any stipulations, representations or promises not printed or written on this contract.

(Testimony of Charles H. King)

Accepted by SPECIAL SITE SIGN CO.

Per Charles H King Jr

Signed

THE RICHMOND COMPANY

Galen C. Downing { Owner
 } Tenant
 } Agent
 } Secty.
Address 2234 Mac Donald Ave
 } Richmond

The owner agrees that if this location be available or used for advertising purposes after Nov. 6, 1925 and the property be owned by the Richmond Co., the second party shall have the first option to renew this agreement at the same price. GCD

[Written on face]: New lease Jan 4 1927
 over

[On back]:

[Diagram of premises.]

[Attached to Agreement]:

Sole Agents For

The Richmond Company

Flint Land Company

Herbert F. Brown, Inc.

Herbert F. Brown Estate

T C. Brown

APPRAISAL AND SALES CORPORATION
of California

2234 Macdonald Avenue

Richmond, California, Nov. 20, 1925

(Testimony of Charles H. King)

Received of Special Site Sign Co. \$30.00 Thirty # Dollars
Sign rent—S/W Corner De Laveaga Tract—From
11/6/25 to 11/6/26

APPRAISAL and SALES CORPORATION
of California

By A Power

The Richmond Co., Inc.

CASH RECEIPT

Received from	No. 2582
Special Site Sign Co	Date 12/11/26

Description	Principal Interest	Miscellaneous	Total
Sign Rent		30 —	
11/6/26 to 11/6/27			
H.J.W.			30 —

No. 5673-C. Special Site vs. Foster & Kleiser Plf Ex-
hibit No. 169-C Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: We occupied that property. We had a 10x50 and a 16x100 bulletin on it. At one time they were on both sides of the highway and then we moved over onto the west side of the highway.

Four Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 169-D, 169-E, 169-F and 169-G in evidence, respectively. Said Plaintiff's Exhibit 169-D in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 169-D.]

[Crest]
Foster and Kleiser
Company

CITY Oakland CLASS. HWY. & SUR
LEASE NO. 3097

LOC. (a) San Pablo Hwy ES from San Pablo Creek
North about 1 Mi.

LEGAL

LOC. (b) San Pablo Hwy WS 4/10 Mis. North San
Pablo Creek 5/10 Mis.

LEGAL

OWNER W. T. WOOD

ADDRESS #1 Drumm St., San Francisco, Calif.

Am't

Date	Offered	By	Contact Data
9-1-27		BEC	5 yrs from 9-1-27 @ 60.00 yr S/A (to be increased 15.00 yr for each sign over 4) Form A-1 from W. T. Wood owner (non-community.)
1-30-31		RW	Title to this property changed to Redwood Highlands Co. Ltd. which company is owned by W. T. Wood. Not to be classed as change in ownership. O. K. WAH
2-17-31		RW	Portion of above property purchased by F. L. Farish, 145 Oak St., Woodland, Calif. Mr. Farish

(Testimony of Charles H. King)

requested we bill W. T. Wood for back rent from time property purchased (about Sept. 1930) until March 1, 1931. Mr. Farish will call at this office and sign new lease before March 1st.

Up 3-1-31

3-5-31 RW Rental on property owned by Parish withheld. Reduce rent to \$105.00 as 7 boards remain on property of W. T. Wood.

3-5-31 RW Letter to W. T. Wood explaining reduction and again requesting refund for F. L. Farish.

Up 3-15-31

3-11-31 RW Letter of 3/5 not mailed to Wood, as refund received. Letter today to Wood ackn. check and explaining reduction in rental and letter to Farish req. he call at our office as soon as possible to make new agreement.

Up 3-25-31

Am't

Date	Offered By	Contact Data
3-25-31	WAH	Let ride until R. G. W.'s return.

Up 4-10-31

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 169-D. Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 169-E in evidence is in words and figures as follows, to-wit:

1324

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 169-E.]

[Crest]

Foster and Kleiser
COMPANY

EL 3.7 Mi. N. Cutting

LOCATION San Pablo Highway RS ~~± mi.~~ N San Pablo
LEGAL

OWNER APPRAISAL AND SALES CORPORA-
TION OF CALIFORNIA
THE RICHMOND CO. INC.

ADDRESS ~~2234~~ Macdonald Ave., Richmond,
10th & MacDonald

AGENT

LEASE NO. 1785

CITY Oakland

CLASSIFICATION HWY

PHONE

	Amt.		
Date	Offered	By	Remarks
5-27-24		LG	10 yrs. from 5-27-24 @ \$15.00 yr. Form B

(Testimony of Charles H. King)

3-25-27	LG	See Lease #1205. New owner.
5-27-27	LG	10 yrs from 5-27-27 @ 15.00 yr Ann. Form A-1 from H. J. Werbe. Covered by lease No. 3097.
		Up 10-30-27

[Stamped on card]: STRUCTURES REMOVED—

CHECK FOR REBUILD OR CANCELLATION

OK WGH

OK JMS

[Stamped on card]: CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 169-E. Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 169-F in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 169-F.]

[Crest]

Foster and Kleiser
CompanySan Pablo Hwy EL...7 Mi. N. Cutting Blvd.
(Richmond)LOCATION ~~San Pablo RS 7 Mi. N. San Pablo~~

LEGAL

OWNER THE RICHMOND CO, INC., American
Trust Bldg. 10th & MacDonaldADDRESS e/o C. Brown, Pres., Richmond.,
~~2234~~ ~~Macdonald~~ Ave. Richmond.,

AGENT

LEASE NO. 1205

CITY Oakland

CLASSIFICATION HWY

PHONE

	Amt.			
Date	Offered	By		Remarks
1-25-21	15.00	EW	5 yrs. from 2/1/21 @ 15.00 yr.	Form -Old F & K Lease & Cont. clause-SF
8-5-25		WH	10 yrs. from 2-1-26 @ \$15. yr.	Ann. Form A-1 (scratched) from Geo. Downing, Secretary.

(Testimony of Charles H. King)

- 3-25-27 LG Property now in hands of Mr. Haverside, 4th floor American Trust Bldg. Richmond. Call Tuesday for answer on exclusive adv. lease for frontage of 1 mile. Present leases good.
- 3-30-27 LG Mr. Haverside states directors not willing to give exclusive.
- 4-13-27 LG Called several times - not in.
- 4-29-27 LG Not in - secty. advised to see 10 A. M. mornings.
- 5-17-27 LG Haverside called - cashier bank - will not consider any signs; advised would call in to see again.
- 5-31-27 LG 10 yrs from 2-2-28 @ 15.00 yr Ann. Form A-1 from H. J. Werbe (agent). Covered by lease No. 3097. Up 10-30-27
STRUCTURES REMOVED--
CHECK FOR REBUILD OR
CANCELLATION

OK H H W.

OK M S

[Stamped on face]: CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 169-F. Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 169-G in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 169-G.]

\$ [Crest]
Foster and Kleiser
Company

CITY Oakland CLASS. HWY & SUR
LEASE NO. 3097

LOC. (a) San Pablo Hwy ES from San Pablo Creek
North about 1 Mi.

LEGAL See Lease.

LOC. (b) San Pablo Hwy WS 5/10 Mi North San
Pablo Creek 4/10 Mi.

LEGAL See Lease

OWNER REDWOOD HIGHLANDS COMPANY,
LTD.

ADDRESS 702 Highway, Redwood City, California

	Am't			
Date	Offered	By		Contact Data

See filled office record card for
previous information.

*4-9-31	WAH	10 yrs from 3-1-31 @ \$105.00 yr 4/Ann Form A-1 from Redwood
---------	-----	---

(Testimony of Charles H. King)

Highlands Company, Ltd. by J. W. B. Taylor, Vice Pres. & M. E. Jessup, Secty. owners 6-C

- 1-29-32 WAH Three more structures being removed this week. See letter dated today to Redwood Highlands Co. which is self-explanatory. Reduce rental to \$60.00 per year effective March 1, 1932.
- 5-28-33 WAH Hold rental. Taylor agreeable to \$15.00 per year reduction effective June 1st. Awaiting confirmation of this arrangement.
- Up 6-10-33
- *6-6-33 WAH Rental reduced to \$45.00 minimum to be increased at \$15.00 yr per unit when more than three are built - Special letter authorizing this reduction received.

*This entry written in red ink.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 169-G Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: This property was north of San Pablo Creek. The office record card covering two locations on San Pablo Highway east side from San Pablo Creek north, and San Pablo Highway west side north from San Pablo Creek, five-tenths of a mile, is the property on which our structures were. The W. T. Wood referred to on that card was the owner of that property. As I understand it, he bought it from The Richmond Company. Our signs were on there when he did. There were no Foster & Kleiser signs on there at any time. I believe they built on it after we removed. I received these letters from Foster & Kleiser dated September 29, 1927 and October 26, 1927.

The letters referred to by the witness were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 169-H and 169-I in evidence, respectively. Said Plaintiff's Exhibit 169-H in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 169-H.]

[Crest]

Foster and Kleiser
— COMPANY —
ADVERTISING

22nd and Market Streets
Telephone Lakeside 8760

Oakland, Cal.
September 29, 1927

Special Site Sign Company
3225 Louise Street
Oakland, California

Gentlemen: Attention Mr. Charles King

Re: San Pablo Highway ES from San Pablo Creek
north approx. 1 mi.

San Pablo Highway WS 4/10 mi. north San
Pablo, 5/10 mi.

As we now have an exclusive lease covering the advertising privileges on the above described property we request that you remove the following structures which you have erected on this property:

- 1 - 10x40' unilluminated bulletin advertising Hotel Claremont
- 1 - approximately 15x70' unilluminated bulletin advertising Western Auto Supply.

We would request that you have these structures removed within the next two weeks or by October 15th, 1927.

(Testimony of Charles H. King)

You also have a large target sign advertising 44 Cigars on San Pablo EL 120' S. Bancroft. As we have an exclusive advertising lease on this location we would request that you remove this structure within five days from date.

Thanking you for giving this your immediate attention, we are

Yours very truly,

FOSTER AND KLEISER COMPANY

H H Walters

H. H. Walters

Manager Lease Department

HHW:RB

OAKLAND BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 169-H Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 169-I in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 169-I.]

[Crest.]

Foster and Kleiser

— COMPANY —
ADVERTISING

22nd and Market Streets
Telephone Lakeside 8760

Oakland, Cal.,
October 26, 1927

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

Gentlemen: RE: (a) San Pablo Hwy ES frm San Pablo Ck North about 1 mile.

(b) San Pablo Hwy WS 4/10 Mi. N.
San-Pablo Creek 5/10 Mile.

Under date of September 29th, 1927, we wrote you requesting that you remove from the above described property, on which we have an exclusive advertising lease, the structures you have there.

We note that you have to date not removed these boards. Inasmuch as our letter gave you two weeks in which to remove these boards, and to date you have not done so, we are hereby notifying you to remove them within the next

(Testimony of Charles H. King)

five days, or we shall be compelled to take them down ourselves and to bill you for the cost of same.

Yours very truly,

FOSTER AND KLEISER COMPANY

H H Walters

H. H. Walters

Manager Lease Department

HHW:NEB

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 169-I Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Witness continuing: We removed our boards after that.

Q And after this alleged change of ownership to Mr. Wood, did Mr. Wood or the former owners ever notify you that your lease was terminated?

A No, they did not. I called on Mr. Wood, he was a personal friend of mine. However, he did not know that the Special Site Sign Company belonged to me. He told me that Foster & Kleiser represented to him that the Special Site Sign Company would not be in the picture very long, so it would be better to do business with Foster & Kleiser. And he interceded with Foster & Kleiser and tried to get them to allow me to stay there, but he was not able to do anything about it. He said he was sorry, but if he had known that Special Site Sign Company belonged to me he would not have made the deal.

(Testimony of Charles H. King)

MR. STERRY: We move to strike that out. I did not object to it because your Honor recollects that we had an agreement, to save time, that we would not object to the statements of lessors on the ground that would be covered by the stipulation, being subject to the same objections and exceptions, but this statement, I think, is outside, being an attempt to prove by hearsay overt acts, and not the result of overt acts.

THE COURT: Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 137.

Q The point I am asking you about, there was no written or oral cancellation of your lease by the new owner, by reason of the change of ownership, or the sale, was there?

MR. CLARK: Object to that on the ground it calls for a pure conclusion.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 138.

A No, there was not.

Witness continuing: This was a surface highway location.

Q What was the value of the site, Mr. King?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own

(Testimony of Charles H. King)

formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 139.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$5,064.

Witness continuing: We had one 10 by 50 and one 16 by 100 painted bulletin on it but this figure, of course, is based on the development of the site. It could have carried seven 10 by 50 bulletins and one 16 by 100 bulletin. It was a considerable piece of property. In applying my formula, I based it on all of the structures which I felt could be erected.

I recall a location three miles north of Stockton on Cherokee Lane, known as the Vignolo property. We had a lease on it at one time. It was our pink form and was for a term of one year with an option of renewal for five succeeding years. I can't recall when that lease was taken. I think we paid \$12 a year rent for the property. I would not be sure. We had a Western Auto Supply sign on the property. I wrote this letter dated March 4, 1926 to Mr. Vignolo and his reply is written on the bottom of it.

The lease referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 170-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 170-A.]

CHARLES H. KING,
General Manager

Telephone
Humbolt 1523

[Crest]

OAKLAND
SPECIAL SITE SIGN CO.
CALIF.

OUT-DOOR ADVERTISERS
We Cover the Pacific Coast

3225 Louise Street
One Block West of Peralta

Oakland, California
March 4, 1926.

Mr. Aaron A. Vignolo,
P. O. Box 162,
Stockton, Calif.

Dear Sir:

We have been told that you have leased the advertising privilege on your property to the Foster & Kleiser Company. Will you please let us know if this information is correct?

We have a sign advertising the Western Auto Supply Co. on your property on Cherokee Lane 3 Mi. North of

(Testimony of Charles H. King)

Stockton, and are interested in knowing if this site is included in a lease to Foster & Kleiser.

Thanking you in advance for your response, we remain

Yours very truly,

SPECIAL SITE SIGN CO.,

BY Charles H King

GENERAL MANAGER.

Dear Mr. King:

All sign space on the A. Vignolo Ranch has been leased to Foster & Kleiser including Western Auto Supply Co. sign.

Respectfully,

Aaron A. Vignolo

by A E V

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 170-A Filed 12/21 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Three Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 170-B, 170-C and 170-D in evidence, respectively. Said Plaintiff's Exhibit 170-B in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 170-B.]

[Crest]

Foster and Kleiser
COMPANY

LOCATION Stockton Blvd 1 , 4-2/10 mi. No. Stockton,
Cherokee

OWNER Aaron A. Vignolo

ADDRESS 1301 No. Edison St., Stockton, Calif.

AGENT

NUMBER 00776

CLASSIFICATION Hwy

PHONE

	Amt.		
Date	Offered	By	Remarks
9/23/22		BS	5 yrs. from 9/1/19 @ \$15.00 pr yr. Pay. Ann. By SF 2040

[Stamped on card]: CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Plf Ex-
hibit No. 170-B. Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 170-C in evidence is in words
and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 170-C.]

[Crest]

Foster and Kleiser
CompanyLOCATION Stkn. Blvd L.S. via C. L. from Calaveras
Riv. to Cal. Traction Co. 3/10 mi

LEGAL See lease reverse

OWNER

OR

LEASE NO. 1990

~~TENANT~~ A. Vignolo,

CITY Sacto.

ADDRESS Box 162, Stockton CLASS. Hwy

AGENT

PHONE

Date	Amt. Offered	By	Remarks
8/24/25	75.00	JVD ^v	3 yrs from 9/1/25 @ 75.00 Ann Form A (Inserted Clause) A. Vignolo
3/31/28		JVD ^v	3 Yrs from 9/1/28 at \$80.00 Yr —2/A Form A-1 A. Vignolo
3/13/31		CET	Asked we call later on 6/1/31
6/ 3/31		CET	Cancel when T.D. comes thru. as we will not renew Tell Mr. Mack to T.D. structure

Date	Amt. Offered	By	Remarks
			Bounded on by Calif Traction Co, W by St. Hwy, N by St Hwy & Calaveras River

No. 5673-C. Special Site vs. Foster & Kleiser Plf Ex-
hibit No. 170-C Filed 12/21 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said Plaintiff's Exhibit 170-D in evidence is in words and figures as follows, to wit:

[PLAINTIFF'S EXHIBIT No. 170-D.]

[Crest]

Foster and Kleiser
Company

CITY SACTO	CLASS Hwy
ASSIGNED TO	LEASE NO. 3251

LOC. US Hwy #99 (Stkn Blvd) LS 3 Mi N of
Harding Way

LEGAL See Lease

LOC.

LEGAL

OWNER A. Vignolo
ADDRESS RFD, Stockton, California

Am't

Date	Offered	By	Contact Data
------	---------	----	--------------

12/26/33		JRN	3 Yrs from 1/1/34 @ \$30.00 Yr Ann Form A1 from A. Vignolo (Non-com) 1-C *
----------	--	-----	--

* This entry written in red ink.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Ex-
hibit No. 170-D. Filed 12/21 1934 R. S. Zimmerman.
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: The term of our lease could be determined by the ledger sheets. I have it in my memorandum there. From this memorandum I find that our lease was from October, 1921 to October, 1926 at \$20 a year rental. Our lease expired in '26 but, as I recall, Foster & Kleiser were on the property before that while our lease was in effect. When I took our lease there were no Foster & Kleiser structures on the property. As far as I know, they appeared on the property after our sign was removed. I don't know who removed our sign. It was down and piled on the property, in about '25 before the expiration of our lease. I went up there and found our sign was down. Foster & Kleiser's sign was up at that time.

Q What was the value of that lease?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further grounds that the records show prior leases by Foster & Kleiser Company and that plaintiff's lease had expired and that there is no showing that Foster & Kleiser Company took the plaintiff's sign down.

(Testimony of Charles H. King)

It is objected to on the further ground that damages on this location are barred by the statute of limitations.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 140.

A. Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$1,104. We had one 10 x 50 highway bulletin on the property.

WEDNESDAY, DECEMBER 26, 1934.

Witness continuing: We had a location in San Francisco on the east side of Mission Street 180 feet south of College Avenue.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

A lease to Special Site Sign Company dated July 23, 1931 covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 171-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 171-A.]

ADVERTISING PRIVILEGE

San Francisco 7/23 1931

In consideration of Six & no/100 Dollars \$6.00 payment to be paid before sign erected hereby lease to the undersigned, lessee, the space wall of building located at E S Mission St 180 ft S. College Ave for advertising purposes for a period of 1 year from 7/23/31 with privilege to said lessee to further use said space for a like consideration for five succeeding periods. Should lessee desire to cancel this contract, lessee shall give lessor 30 day's written notice before end of any term

SPECIAL SITE SIGN CO.

3225 Louise St. Oakland, Calif.

By GOS St

Lessee

St. Marus Park

Owner

Agent

A. R. Johnson

~~Tenant~~

Lessor

Address 3901 Mission

A R Johnson

[On back]:

[Diagram of premises.]

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 171-a Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Two Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibits 171-B and 171-C in evidence, respectively. Said Plaintiff's Exhibit 171-B in evidence is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 171-B.]

[Crest]

Foster and Kleiser
COMPANY

#10855

4

3920 CITY S. F. CLASS. Sur LEASE No.

LOC.	(A) Mission EL College Ave. to Murray St. 666x100 depth
LEGAL	Block 1383-D Lot 1 & Lots 20 to 43
LOC.	(B) Mission EL Murray St. to Mission Viaduct 830 843.164x100 depth
LEGAL	Block 1383-C Lots 29 to 60
OWNER	Roman Catholic Archbishop of S. F. by A. R. Johnson, Agt. Edward J. Hanna
ADDRESS	College Ave. & Mission, S. F. 1100 Franklin St., S. F.

Am't

Date	Offered	By	Contact Data	B3	ITA
11/26/29		JFW	Johnson advises lot 41 sold—being built on.		

(Testimony of Charles H. King)

12/14/29	JFW	Left leases with Johnson.	
1/ 8/30	JFW	Johnson advises Archbishop's office declines to lease. Will not allow any adv.	Up 3/1/30
3/11/30	JFW	Ownership OK.	up 6/1
6/ 4/30	JFW	Ownership same.	Up 8/25/30
8/22/30	WCM	No contact.	
8/26/30	WCM	Golf course pending.	Up 11/1/30
1/14/31	JWD	Lally of Archbishop's office requests letter and layout.	
1/19/31	JWD	Letter to Archbishop's office with diagrams quoting \$36.00.	
1/28/31	JWD	Lally has not had chance to take up. LWC	Up 2/15
*3/ 6/31	JWD	10 yrs. from 2/6/31 @ \$36.00 yr. - S/A Form A-1 (Sale & O. T. A. Clause) from The Roman Catholic Archbishop of S. F. by Edward J. Hanna. (Non-Community) 3C	

*This entry typewritten in red.

[Stamped on face of card]:

3/10/31 TRANS. TO NEW CARD

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 171-B. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 171-C in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 171-C.]

[Crest]

Foster and Kleiser
COMPANY

City S. F. Class Sur S. P. D. Assigned to
Lease No. 10855

LOC. (A) Mission EL College to Murray 635.655
 LEGAL EL Mission College to Murray 635.655x100
 LOC (B) Mission EL Murray to Mission Viaduct
 836.475
 LEGAL EL Mission Murray to Mission Viaduct
 836.475x100
 OWNER The Roman Catholic Archbishop of S. F.,
 by Edward J. Hanna
 ADDRESS 1100 Franklin St., S. F.

Date	Am't Offered	By	Contact Data
*3/ 6/31		JWD	10 Yrs. from 2/6/31 @ \$36.00 yr. - S/A Form A1 (Sale & O. T. A. Clause) from the Roman Catholic Archbishop of S. F. by Edward J. Hanna. (Non-community)-1C Mr. Barry advised 1-C Notarial
1/20/32		LWC	Former lease #8041 included un- der lease #10855, no increase, no increase in rental.

(Testimony of Charles H. King)

- 2/ 3/32 JWD Letter advising we are inc. rental to \$50.00 yr. as of 2/6/32.
- 2/ 9/32 LWC Letter to Roman Catholic Archbishop thanking them for privilege of allowing us to change position of our signs made necessary by building new Safeway Stores and enc. check for \$25.00. (See lease Env.) File.
- 2/11/32 RCB Ord. iss. Cons. 75 Ill. Post.
- 2/19/32 RCB Ord. iss. build 25 Ill. Post.
- 4/30/32 JWD SPD. to pay S. F. Branch @ rate of \$20.00 yr. com. 3/21/32 cov. sublet on "A" loc.

* This entry typewritten in red.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 171-C. Filed 12/26/1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: At the time our lease was made there were no other structures on the property. I had no knowledge of any advertising lease on the property. We built a 3x3 target sign for the Wilson Candy Company. Foster & Kleiser built on the property directly behind us after we had built.

Q Now, what, if anything, happened to your sign after Foster & Kleiser had built their structure?

MR. CLARK: Objected to as irrelevant unless it is connected up with some act of Foster & Kleiser Company.

(Testimony of Charles H. King)

MR. GLENSOR: We propose to prove, if your Honor please, that after the sign was built it was twisted around so as to be at right angles to Foster & Kleiser's sign; that there was an exchange of correspondence between Foster & Kleiser and the Special Site Sign Company. In the letter to Foster & Kleiser to the Special Site Sign Company they denied that they had disturbed the sign, but the fact is that it was never disturbed thereafter. That is the offer I will make on that. We claim no money lost on it.

MR. CLARK: On that statement of plaintiff, I object to it as wholly irrelevant and entirely speculative, your Honor.

THE COURT: I will let the evidence be admitted.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 141.

A The sign was twisted around so that it would point to the Foster & Kleiser sign. It was edgewise to Foster & Kleiser's sign. It did not retain any advertising value while it was twisted in that position.

Witness continuing: I signed and mailed the original of this letter dated June 23, 1932 to Foster & Kleiser. This letter dated July 6, 1932 is the reply which I received.

The two letters referred to by the witness were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 171-D and 171-E in evidence, respectively. Said Plaintiff's Exhibit 171-D in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 171-D.]

June 23, 1932.

Foster & Kleiser Co.,
1675 Eddy St.,
San Francisco, Calif.

Gentlemen:

We are maintaining a 3x3 ft. sign advertising WILSON'S on St. Mary's Park property on the East side of Mission St., about 180 ft. South of College Ave., San Francisco.

On two different occasions recently our sign has been badly mutilated and it has been reported to us that your men are responsible for this damage.

We have a prior right on the property and your sign was erected after we had erected ours. You placed your sign squarely behind ours.

We are going to repair our sign again and, if this report to us is correct, we ask you to please take steps to see that there is not a recurrence of this damage.

Very truly yours,

SPECIAL SITE SIGN CO.,
BY
GENERAL MANAGER.

CHK-MSM

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 171-D. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 171-E in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 171-E.]

[Crest]

Foster and Kleiser
— COMPANY —

Advertising

Eddy Street at Pierce

Telephone Walnut 10

San Francisco, Cal.

July 6, 1932.

Special Site Sign Company,
3225 Louise Street,
Oakland, Calif.

Attention: Mr. Charles H. King.

Gentlemen:

I am informed that our Mr. Carroll has personally contacted your office in response to your letter of June 23rd.

In answer to the second paragraph of your letter of that date, in order to clear up any misconception that you may have, you are hereby informed that we are in no way responsible for any damage that may have been done to your sign.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. Blair Foster

W. Blair Foster

Manager San Francisco Branch.

WBF:MB

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 171-E. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Q BY MR. GLENSOR: After these letters were exchanged, was there any further disturbance of your sign?

MR. CLARK: I object to that as irrelevant and immaterial.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 142.

A No, sir.

Witness continuing: We had a location on property at Charleston Road and State Highway, Mayfield.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934 and it is also barred by the statute of limitations.

A lease from one Rueter to Special Site Sign Company, dated March 24, 1921, was thereupon received in evidence and marked Plaintiff's Exhibit 172-A in evidence. Said exhibit was thereupon read to the jury.

Plaintiff's Exhibit 172-A in evidence was lost or misplaced. In lieu of the exhibit itself, counsel for the respective parties have stipulated that in substance and effect said exhibit was and is a lease from one, Ed Rueter to Special Site Sign Company, dated March 24, 1921, for one year, at a rental of \$15.00 per annum, of property located at Charleston Road and State Highway, Mayfield, California, for outdoor advertising purposes.

(Testimony of Charles H. King)

Witness continuing: We built on the property and were there some time. The sign was taken away. We did not keep our sign on the property after our written lease had expired. The lease was year to year as I recall it, that is, a written lease for one year and we remained on there until 1924 under a verbal lease.

Foster & Kleiser Company's office record card covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 172-B in evidence. Said exhibit was thereupon read to the jury.

Plaintiff's Exhibit 172-B in evidence was lost or misplaced. In lieu of the exhibit itself, counsel for the respective parties have stipulated that in substance and effect the said exhibit related to the property described in Plaintiff's Exhibit 172-A, and contained the following entries and none other:

"9/28/23. 10-year lease from 9/28/23, at rental of \$5.00 per year, highway protection, form A continuation clause. It is understood and agreed that no signs will be erected on the premises 1.1 miles south of Mayfield.

"9/28/31. Confirmed oral agreement to cancel lease as of 9/28/31, the date to which rental paid.

"7/15/31. Canc. Letter accepted and filed lease envelop."

(Testimony of Charles H. King)

Witness continuing: That was where our sign was erected. Our sign was carried away. I did not personally see it taken away and I do not know of my own knowledge who took it. We never erected any other sign on that property. I consulted Mr. Rueter about a further extension of our lease. He said he wouldn't give it to me, that he didn't want any signs there. That was in 1924 and I did not know at that time that Foster & Kleiser had a lease of it.

We had a sign on the Perkins-Folsom Highway three-tenths of a mile west of the Town of Perkins, on property which we leased from Perkins.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

Witness continuing: We had a sign on that property. I don't know where our written lease is, I could not find it. The terms of the lease, as I recall it, were \$12 and it was one and six. I made a note of the time that the lease commenced to run in my file there. I got the information from which I made this memorandum from the ledger sheet.

Q From what date did it start?

MR. CLARK: May I ask a question on voir dire?

THE COURT: Yes.

Q BY MR. CLARK: Who made the entry on the ledger sheet?

A Mrs. Montgomery.

(Testimony of Charles H. King)

MR. CLARK: I object to the witness answering the question on the ground it is self-evident that he cannot know whether or not it is correct or incorrect. The memorandum is a memorandum recently made, was it not, Mr. King?

A Yes, sir.

THE COURT: If he sees something, some notes on his own books that bring back the recollection, it seems to me he may testify. Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 143.

A The lease was from August, 1922 to 1928. I have already said it was for one year with the right of renewal for five.

BY MR. CLARK:

To the best of my recollection I obtained that data that I now have there and that now appears in my memorandum that I have in my hand from the Champion Spark Plug account in the ledger. I don't know of any other source from which I could have obtained it.

BY THE COURT:

Our ledger sheets show the time and place of these different signs. We collected money from this advertiser that I mentioned until 1928 for this particular site. I conclude, therefore, that my lease ran up to that time.

(Testimony of Charles H. King)

Q BY MR. STERRY: Assuming that your ledger sheet shows the date of the account stated, how on earth could it show the length of a lease?

A Well, the form shows that. They were taken under the same form of lease.

THE COURT: Well, do you have any independent recollection of this particular lease?

A. Yes, I do, your Honor.

THE COURT: And your recollection is that it was one and five years?

A. Yes, sir.

THE COURT: All right, let the evidence stand. Proceed.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 144.

Witness continuing: These two checks which you show me paid the rental on the Perkins property from August 10, 1923 to August 10, 1925 and were issued by my company to Mr. Perkins. They came back to me from our bank in the regular course of business. These checks helped in determining the date of origin of our lease.

The two checks referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibits 173-G and 173-H in evidence, respectively. A true and correct reproduction of said Plaintiff's Exhibit 173-G in evidence follows:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 173-G.]

This check is issued in payment of items as per statement following. The endorsement of payee on back will constitute a receipt in full.

Location Rental 8/10/23 to 8/10/24.

Champion Spark Plug Co. Perkins, Calif.

To CENTRAL NATIONAL BANK
90-4 OAKLAND, CALIFORNIA

173

SPECIAL SITE SIGN CO.

308 Twelfth Street

No.4644

Oakland, California Sept. 5 1923.

Pay to the order of C. C. Perkins \$12.00
 ————— Twelve Dollars ————— Dollars

SPECIAL SITE SIGN CO.

Charles H King Jr.

President

Asst. Secretary

Gen. Manager

[Perforated]: PAID 10-27-25 90-4

[Stamped on face]:

year

Wood & Strong Certified Public Accountants

(Testimony of Charles H. King)

[Tinted vignette, printed on face]:

Central National Bank of Oakland, Calif.

[Reverse side]:

C. C. Perkins

Wm Lais

M F Smith

[Stamped]:

Pay to the Order of Any Bank or Banker. Prior Endorsements Guaranteed A Oct 26 1925 R California National Bank Sacramento, Calif. A.B. Carter, Cashier 90-33

Paid Through Clearing House 90-1 Oct 25 1925
The Oakland Bank

28

No. 5673-C. Special Site vs. Foster & Kleiser Plf. Exhibit No. 173-G. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

A true and correct reproduction of said Plaintiff's Exhibit 173-H in evidence follows:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 173-H.]

This check is issued in payment of items as per statement following. The endorsement of payee on back will constitute a receipt in full

Champion Sign
 Location Rental
 8/10/24 to 8/10/25

To CENTRAL NATIONAL BANK
 90-4 OAKLAND, CALIFORNIA

173

SPECIAL SITE SIGN CO.

308 Twelfth Street No. 5780

3225 Louise St., Humbolt 1523

Oakland, California Aug 29 1924 192....

Pay to the order of C. C. Perkins \$12.00

Twelve & no/100 _____ Dollars

SPECIAL SITE SIGN CO.

Charles H King Jr.

President Asst. Secretary

Gen. Manager

[Perforated]: PAID 11-20-24 90-4

(Testimony of Charles H. King)

[Reverse side]:

C. C. Perkins

[Stamped]:

Pay to the Order of The California National Bank of
Sacramento, Calif. 90-33 Prior Endorsements Guarante-
ed Perkins & Co. P-255

Pay to the Order of Any Bank or Banker All Prior
Endorsements Guaranteed O Nov 18 1924 Z Cali-
fornia National Bank Sacramento, Calif. A. B. Carter,
Cashier 90-33

Paid Through Clearing House 90-1 Nov 20 1924
The Oakland Bank

8

R

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 173-H. Filed 12/26 1934 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: We built on the location at the time we got the lease. At that time there were no other advertising structures on the property and I did not know of any other lease or rights to build advertising structures on there. I received this letter on Foster & Kleiser's letterhead with the note written by Mr. Perkins to us on the bottom thereof through the mail. At the time I received it our structures were on the property bearing Champion Spark Plug copy.

Mr. Glensor thereupon offered in evidence the letter referred to by the witness.

MR. CLARK: That is objected to on the ground that it is incompetent and hearsay.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 145.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 173-B in evidence, and is in words and figures as follows, to wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 173-B.]

[Letterhead]

(1)

Foster and Kleiser
— COMPANY —

OUTDOOR ADVERTISING

Fourteenth and U Streets
Telephone Main 768

SACRAMENTO, CAL.

Sept. 18, 1923

Mr. C. C. Perkins,
% Perkins & Co.
Perkins, Calif.

Dear Sir:

We have your letter of Sept. 15th advising us that you had received a check from the Special Site Sign Co.

Will you kindly return the check to the makers and ask them to remove their advertising structure, advising them that the property has been leased by our company.

Thanking you very much for your cooperation, we beg to remain,

Very truly yours

FOSTER AND KLEISER CO.

By C. E. Terrell
C. E. Terrell L

CET:L

Lease Manager

(Testimony of Charles H. King)

Special Site Co.

Oakland Calif.

Gentlemen;—I beg to return your check for \$12.00
The above letter explains the situation. These people
having rented the premises on which your sign was placed,
prior to date for your renewal. I regret very much to
ask this of you.

Yours very truly,

C. C. Perkins

SACRAMENTO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 173-B Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office record card cover-
ing the property referred to by the witness was thereupon
received in evidence and marked Plaintiff's Exhibit 173-C
in evidence, and is in words and figures as follows, to-
wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 173-C.]

[Crest]

Foster and Kleiser
COMPANYLOCATION (A) Folsom Blvd LS 3/10 mi W Perkins
(B) Folsom Blvd RS 1/10 E Perkins

LEGAL SE 1/4 of NW 1/4 Sec 14 T 8 N R 5 E

OWNER C. C. Perkins,

ADDRESS Perkins, Cal..

AGENT

LEASE NO. 805

CITY Sacto.

CLASS. Hwy

PHONE

	Amt.		
Date	Offered	By	Remarks
9/25/22		BS	2 yrs from 5/1/20 @ 5.00 per yr pay Ann By SF 1917
4/14/23		WF	5 yrs from 9/15/24 @ 60.00 per yr.

(Testimony of Charles H. King)

- 8/12/26 “ Inspected by WLF as per order
of WHF going to cancel lease
Up 9/1
- 8/13 “ Cancel this lease on next payt. date
or 9/15/26 Up 9/15
- 9/22 “ Cancel as noted above
STRUCTURES REMOVED —
CHECK FOR REBUILD OR
CANCELLATION.

[Stamped on face of card] CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 173-C Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: I signed and mailed the original
of this letter dated October 11, 1923.

The letter referred to by the witness was thereupon
received in evidence and marked Plaintiff's Exhibit 173-D
in evidence, and is in words and figures as follows, to-
wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 173-D.]

[Letterhead]

SPECIAL SITE SIGN CO.
Phone Oakland 300
308 TWELFTH STREET

[Cut]

Fifteen Million People Annually Read this Sign

OAKLAND, CALIFORNIA.....

[Cut]

Oakland's Suburban Electric Railroad systems carry
36,000,000 people annually. We cover them all.

[Cut]

To reach the automobile we have special locations
on the Highway.

[Cut]

Our city locations are special. They cover the entire
population with few signs, thus giving you maximum
service at minimum cost.

[On back of letterhead]

(2)

October 11, 1923.

Mr. C. C. Perkins,
c/o Perkins & Co.,
Perkins, Calif.

Dear Sir:

We are in receipt of letter received by you from the
Foster & Kleiser Co. in regard to check which we mailed
you for our Champion Spark Plug display.

(Testimony of Charles H. King)

You signed a lease with us for this privilege and we do not understand your attitude in ordering us off in favor of Foster & Kleiser.

We are enclosing copy of a letter which we have written today to Foster & Kleiser and also our check covering rental of this sign for the coming year.

We trust that you will accept same in accordance with your contract signed August 10, 1922.

Yours truly,

SPECIAL SITE SIGN CO.,

BY

CHK-MSM

GENERAL MANAGER.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 173-D. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: The reference in that letter to a contract with Perkins dated August 10, 1922 refers to our lease on the property. I mailed and sent the original of this letter dated October 11, 1923 to Foster & Kleiser and sent a copy of it to Mr. Perkins.

The letter last referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 173-E in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT NO. 173-E.]

[Letterhead]

SPECIAL SITE SIGN CO.

Phone Oakland 300
308 TWEFLTH STREET

[Cut]

Fifteen Million People Annually Read this Sign

OAKLAND, CALIFORNIA.....

[Cut]

Oakland's Suburban Electric Railroad systems carry
36,000,000 people annually. We cover them all.

[Cut]

To reach the automobile we have special locations
on the Highway.

[Cut]

Our city locations are special. They cover the entire
population with few signs, thus giving you maximum
service at minimum cost.

(Testimony of Charles H. King)

[On back of letterhead]

(4)

October 11, 1923.

Foster & Kleiser Co.,
14th & U Sts.,
Sacramento, Calif.

Attention: C. E. Terrell, Lease Mgr.

Gentlemen:

We are in receipt of your letter to Mr. C. C. Perkins, of Perkins, California, in regard to a check which we mailed him covering lease rental on Champion Spark Plug display from August 10, 1923 to 1924.

We have a five year lease signed by Mr. C. C. Perkins for this privilege and if leases are worthless neither you nor ourselves would continue in business for any length of time.

We resent your letter to Mr. Perkins and are taking the matter up with him by letter, also with the San Francisco office.

Yours truly,

SPECIAL SITE SIGN CO.,

BY

CHK-MSM

GENERAL MANAGER.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 173-E. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: This letter dated October 12th from Mr. Perkins was in reply to our letter of October 11th.

Mr. Glensor thereupon offered in evidence the letter referred to by the witness.

MR. CLARK: That is objected to on the ground that it is incompetent and hearsay.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 145-a.

The letter last referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 173-F in evidence, and is in words and figures as follows, to wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 173-F.]

3—STORES—3

J Street, M Street at 17th, Sacramento
and Perkins, Cal.

[Cut]

J Street Store, Display and Sales Department

PERKINS GRAIN AND MILLING CO.

Wholesale Dealers in Grain and Feed of All Kinds

FLOUR MILLS

Mill & Warehouses at Perkins
Office, 820 J St., Sacramento

[Cut]

ROYAL GEM FLOUR

PERKINS FARMING CO.

Grain and Live Stock

Perkins & Co. (3)

General Store

Groceries, Grain and Feed
Automobile Accessories

PERKINS, Sac. Co., Cal. Oct 12, 1923

Special Site Sign Co.

Oakland Calif.

Gentlemen;

I have your letter of the 11th. inst. I sincerely regret
this controversy.

(Testimony of Charles H. King)

When I sold the Foster & Kleiser co the exclusive sign board spaces on a part of my property, I allowed their agent to go over my old contracts with other advertisers and if as you state you *ahve* a five years lease for this sign, it must have been overlooked at the time.

When I first received your check, I immediately notified Foster & Kleiser, and offered to send them your check and let your sign remain. Their reply was sent to you.

So far as I am concerned I have no objection to accepting your money and allowing the sign to remain, if you can fight it out with Kleiser? In the mean time I will hold your check, until hearing further from you, or from them.

Very sincerely,

C. C. Perkins

C. C. Perkins

P. S. I must say that I do not like their attitude toward you.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 173-F. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: Our sign on those premises was carried away. I don't know who did it. We did not do it. We never found it.

BY MR. GLENSOR: What was the value of the Perkins location, Mr. King?

(Testimony of Charles H. King)

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. I further object to any testimony on damages with reference to this location on the ground that it is barred by the statute of limitations.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which Foster & Kleiser Company still excepts and here designates as Exception No. 146.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$552.

Witness continuing: We had a location on the property of John F. Snow on the back of a shed at 4701 Grove Street in Oakland.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

A lease to Special Site Sign Company dated December 7, 1923 was thereupon received in evidence and marked Plaintiff's Exhibit 174-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT NO. 174-A.]

Oakland, Cal., 12-7, 1923

In Consideration of 10.00 payable when sign is erected (\$.....) Dollars per year, payable in advance installments, the undersigned, Lessor, hereby leases to SPECIAL SITE SIGN CO., of 308 Twelfth Street, Oakland, California, Lessee, its successors or assigns, the premises (with the privilege of access through and upon same) known and described as follows, to-wit: Back of shed 4707 Grove St for the exclusive erection and maintenance of advertising signboards thereon. Rent to commence when the signboards are erected on said property, and on like terms for the five (5) succeeding years, unless terminated by the Lessor as hereinafter provided, or terminated by the Lessee giving ten (10) days' written notice of termination of this Lease, and removing said signboards from said property.

It is Expressly Agreed, that the Lessor may order the advertising signboards removed at any time by giving the Lessee thirty (30) days' notice in writing, in case the Lessor sells the premises, or improves same by erecting a building on said premises, or leases said premises for other than advertising purposes, and upon consummation of said sale, or improvement thereon, evidenced by passing of Deed or Building Permit, respectively, the Lessor

(Testimony of Charles H. King)

shall refund to the Lessee the rent paid in advance, pro rata, from the time of the removal of its boards. In case the boards should be removed pursuant to any such notice, and the proposed sale or improvement should not be made forthwith, then the Lessee shall again have the exclusive right to replace its boards on said premises, and this Lease shall continue in force for the term above mentioned.

Should the View of the boards become in any way obstructed, the Lessee may terminate this Lease and the Lessor shall refund to the Lessee the rent paid in advance, pro rata, for the unexpired term above mentioned.

All Boards placed on the premises under this Lease shall remain the property of the Lessee, and may be removed by them at any time.

SPECIAL SITE SIGN CO., Lessee,

By Chas Battin

Pd Dec 13, 23 Battin Exp sheet

John F Snow C & D Co.

Per M. A.

Lessor.

Address 4701 Grove

[Written on face]: Sign wrecked

[On back]:

[Diagram of premises.]

1376

(Testimony of Charles H. King)

Telephones { Piedmont 185
 { Piedmont 186

Established 1859

J. B. Ward, President
S. Keating, Vice-President
E. O. Deming, Secretary & Treasurer

12/11/23 192....

Special Site Sign Co.

In Account With

John F. Snow Dyeing & Cleaning Co.
Incorporated

“The Original Snow Man”

47th & Grove Streets - Oakland, California

Received Ten Dollars (\$10.00) as per Contract

John F Snow C & D Co.
Per M. A.

Receipt 1st yrs rental

47 & Grove

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 174-A Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: At the time we leased this property we built a 6 by 10 painted bulletin on it, which is also called a miniature de luxe. Foster & Kleiser built a 24-sheet poster on the adjoining property which built our structure out. After they had built it out our location was of no value as an advertising site. We did not take our sign down. It was knocked down and I found it on the edge of a creek about 40 feet deep, and we left it there because I could not get it out. I don't know who owned the property adjoining the Snow property but it was the property immediately north on the west line of Grove Street. It is just on the bank of Temescal Creek. The creek is about 20 feet wide and both of our signs were right on the banks. Both of the signs were to read to traffic southbound.

We never rebuilt that property. Our miniature de luxe bulletin was erected there about six months before this structure was built across the creek. We had a Federal Washing Machine copy on our board.

Q. What was the value of that Snow leasehold?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his

(Testimony of Charles H. King)

formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. I further object to any testimony on damages with reference to this location on the ground that it is barred by the statute of limitations.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 147.

A According to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$204.

Witness continuing: We had a location on the property of F. E. Jacobs on the east side of the highway and S. P. Railway tracks north of Fresno.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

Two leases in favor of Special Site Sign Company dated February 3, 1921 and February 3, 1925, respectively, together with a group of rental checks, were thereupon received in evidence and marked Plaintiff's Exhibit 175-A in evidence, and are in words and figures as follows:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 175-A.]

This check is issued in payment of items as per statement following. The endorsement of payee on back will constitute a receipt in full

Location Rental 2/3/23 to 2/3/24

To CENTRAL NATIONAL BANK,
90-4 OAKLAND, CALIFORNIA

SPECIAL SITE SIGN CO.

308 Twelfth Street No. 3974

Oakland, California 2/13 1923

Pay to the order of F. E. Jacobs \$10.00

———— Ten Dollars ————— Dollars

SPECIAL SITE SIGN CO.

Charles H King Jr F. E. Neibert

President Asst. Secretary

Gen. Manager

[Perforated]: PAID 3-23-23 90-4

[Stamped on face]:

Hood & Strong Certified Public Accountants

[Tinted vignette, printed on face]:

Central National Bank of Oakland, Calif.

[Reverse side]:

F. E. Jacobs

[Stamped]:

10 B of I No. 9

Pay to Order of Any Bank, Banker or Trust Co. All
Prior Endorsements Guaranteed Mar 23, 1923 Bank of
Italy First Branch Successors to First National Bank
Fresno, California. 10-111

Paid — Mar 23 1923 90-7 Oakland Calif Oakland
Branch—Bank of Italy Through Clearing House

(Testimony of Charles H. King)

This check is issued in payment of items as per statement following. The endorsement of payee on back will constitute a receipt in full

Location Rental 2/3/24 to 2/3/25

To CENTRAL NATIONAL BANK,
90-4 OAKLAND, CALIFORNIA

SPECIAL SITE SIGN CO.

308 Twelfth Street No. 5145

Oakland, California 2/21 1924.

Pay to the order of F. E. Jacobs \$10.00
 ————— Ten Dollars ————— Dollars

SPECIAL SITE SIGN CO.

Charles H King Jr.

President Asst. Secretary

Gen. Manager

[Perforated]: PAID 2-27-24 90-4

[Tinted vignette, printed on face]:

Central National Bank of Oakland, Calif.

[Reverse side]:

F. E. Jacobs

[Stamped]:

No. 9 Pay to the Order of Any Bank, Banker, or Trust Co All Prior Endorsements Guaranteed Feb 25 1924 Bank of Italy First Branch Successors to The First National Bank of 90-33 Fresno, California 90-33 Paid Feb 27 1924 90-7 Oakland Calif. Oakland Branch Bank of Italy Through Clearing House

Key Route

OAKLAND SPECIAL SITE SIGN CO. CALIF.

DUPLICATE

ADVERTISING PRIVILEGE

Memorandum of Agreement, made this 3rd day of February, 1925

by and between E. E. Jacobs
the party of the first part, and **SPECIAL SITE SIGN CO.**, party of the second part.

Witnesseth, That for the consideration hereinafter named, to be paid by second party to first party, the said first party hereby grants to said second party the exclusive use of the following described premises, with free access and entrance to and upon same at any and all times during the term hereof:

Property of E. E. Jacobs on East side of Highway and S.P.R.R. Tracks south of Fresno,
(SPACE FOR 10x50 ft. SIGN AS AT PRESENT LOCATED)

situated in the City of California State of California for a period of five years from February 3, 1925

for the purpose of constructing and maintaining painted, printed, or illuminated signs or devices for advertising purposes, including the placing and maintaining of devices for the illumination of such signs with necessary connections therefor. In consideration of whi the party of the second part agrees to pay the party of the first part the sum of Ten Dollars

and no/100ths Dollars, payable annually in advance for each year of said term during which said premises are used for said advertising purposes.

This agreement shall continue in force from year to year after the term hereof unless terminated at the end of such term, or any such additional year, upon written notice of either party served not less than thirty days before the end of such term or additional year; provided, however, that if the said property is sold, or the possession thereof required by the first party for the purpose of building upon, or is leased for other than advertising purposes, then this contract shall terminate, and the first party shall refund to the second party, the unearned portion of rent paid by the second party, if any, and in this event the second party shall remove all signs and connections upon ten days' written notice from the first party. In the event that the said premises shall be altered or changed in such manner that the advertising value thereof, is destroyed, or impaired, or should the view of such premises become obstructed or the use thereof prevented by law, the second party shall have the right to cancel this agreement and have a refund of the unearned portion of rent already paid, if any.

The party of the second part is hereby authorized to remove any and all signs of any other person or corporation on said rented premises, and shall be the owner of and have the right to remove all signs, material, and equipment placed on said premises under this agreement.

It is expressly understood that **SPECIAL SITE SIGN CO.** is not bound by any stipulations, representations or promises not printed or written on this contract.
Accepted by **SPECIAL SITE SIGN CO.**

Per Charles H. King Signed E. E. Jacobs } Owner
Tenant
Agent
Address Route 1 Box 76, Fresno

www.willowville.com

No.	<u>56734</u>
Special Site	<u>Sign</u>
vs	<u>Klase</u>
EXHIBIT	
No.	<u>175-a</u>
Filed	<u>12/26 1924</u>
R. S. ZIMMERMAN, Clerk	
By	<u>[Signature]</u>

Oakland, Cal., Feb 3, 1921

In Consideration of Five Dollars (\$10.00) Dollars

per year, payable in monthly installments in advance, the undersigned, Lessor, hereby leases to SPECIAL SITE SIGN CO., of 308 Twelfth Street, Oakland, California, Lessee, its successors or assigns, the premises (with the privilege of access through and upon same) known and described as follows, to-wit:

Portion of F. S. Jacobs on East side of Highway and S. P. R. tracks south of Fresno City

for the exclusive erection and maintenance of advertising signboards thereon. Rent to commence when the signboards are erected on said property, and on like terms for the five (5) succeeding years, unless terminated by the Lessor as hereinafter provided, or terminated by the Lessee giving ten (10) days' written notice of termination of this Lease, and removing said signboards from said property.

It is Expressly Agreed, that the Lessor may order the advertising signboards removed at any time by giving the Lessee thirty (30) days' notice in writing, in case the Lessor sells the premises, or improves same by erecting a building on said premises, or leases said premises for other than advertising purposes, and upon consummation of said sale, or improvement thereon, evidenced by passing of Deed or Building Permit, respectively, the Lessor shall refund to the Lessee the rent paid in advance, pro rata, from the time of the removal of its boards. In case the boards should be removed pursuant to any such notice, and the proposed sale or improvement should not be made forthwith, then the Lessee shall again have the exclusive right to replace its boards on said premises, and this Lease shall continue in force for the term above mentioned.

Should the View of the boards become in any way obstructed, the Lessee may terminate this Lease and the Lessor shall refund to the Lessee the rent paid in advance, pro rata, for the unexpired term above mentioned.

All Boards placed on the premises under this Lease shall remain the property of the Lessee, and may be removed by them at any time.

SPECIAL SITE SIGN CO., Lessee,

BY: Charles Klump F. E. Jacobs Lessor.

Address: R A Box 156 Fresno Calif.

NO 5673C
RTS EX 175B
FILED-12-2-21

Paid 2/3/21 to 2/3/22
check # 0096

(Testimony of Charles H. King)

This check is issued in payment of items as per statement following. The endorsement of payee on back will constitute a receipt in full

Sign Location Rental 2/3/25 to 2/3/26

Key Route I NN Sign

To CENTRAL NATIONAL BANK,
90-4 OAKLAND, CALIFORNIA

SPECIAL SITE SIGN CO.

3225 Louise Street

No. 6510

Oakland, California Mar 26 1925 192....

Pay to the order of F. E. Jacobs \$10.00
Ten & 00/100 ————— Dollars

SPECIAL SITE SIGN CO.

Charles H King Jr.

Gen'l Manager

[Perforated]: PAID 4-13-25 90-4

[Stamped on face]: 5 10

[Tinted vignette, printed on face]:

Central National Bank of Oakland, Cal.

[Reverse side]:

F. E. Jacobs

No. 9 Pay the Order of Any Bank, Banker, or Trust
Co. All Prior Endorsements Guaranteed Apr 10 1925
Bank of Italy First Branch Successors to The First
National Bank of 90-66 Fresno, California 90-66

10 Box I

(Testimony of Charles H. King)

This check is issued in payment of items as per statement following. The endorsement of payee on back will constitute a receipt in full

Under Advertising Privilege 2/3/26 to 2/3/27.

To CENTRAL NATIONAL BANK,
90-4 OAKLAND, CALIFORNIA

SPECIAL SITE SIGN CO.

3225 Louise Street

No. 9045

Oakland, California May 19 1927 192....

Pay to the order of F. E. Jacobs \$10.00

Insured ——— Ten Dollars ————— Dollars

Paid May 28 1927 90-7 Oakland Calif. Oakland
Branch-Bank of Italy Through Clearing House

Pay to the Order of Any Bank, Banker or Trust Co.
All Prior Endorsements Guaranteed May 26 1927
90-90 Fresno Main Office 90-90 Bank of Italy National
Trust & Savings Association Fresno, Calif.

SPECIAL SITE SIGN CO.

Charles H King Jr.

Gen'l Manager

[Perforated]: PAID 5-28-27 90-4

[Tinted vignette, printed on face]:

Central National Bank of Oakland, Calif.

[Reverse side]:

F E Jacobs

[Stamped]:

(Testimony of Charles H. King)

This check is issued in payment of items as per statement following. The endorsement of payee on back will constitute a receipt in full

Rental Under Advertising Privilege 2/3/27 to 2/3/28
N. of Fresno

To CENTRAL NATIONAL BANK,
90-4 OAKLAND, CALIFORNIA

SPECIAL SITE SIGN CO.

3225 Louise Street No. 9180

Oakland, California Jun 10 27 192....

Pay to the order of F. E. Jacobs \$10.00

Insured Ten Dollars Dollars

SPECIAL SITE SIGN CO.

Charles H King Jr.

Gen'l Manager

[Perforated]: PAID 6-27-27 90-4

[Tinted vignette, printed on face]:

Central National Bank of Oakland, Calif.

[Written on face]: 39

[Stamped on face]: Square

[Reverse side]:

F E Jacobs

Paid Thru Clearing House Jun 27 1927 90-7 Oak-
land Calif. Oakland Branch - Bank of Italy National
Trust & Savings Association

Pay to the Order of Any Bank, Banker or Trust Co.
All Prior Endorsements Guaranteed Jun 25 1927 90-90
Fresno Main Office 90-90 Bank of Italy National Trust
& Savings Association Fresno, Calif.

(Testimony of Charles H. King)

This check is issued in payment of items as per statement following. The endorsement of payee on back will constitute a receipt in full

Rental under Advertising Privilege 2/3/28 to 2/3/29.

To CENTRAL NATIONAL BANK,
90-4 OAKLAND, CALIFORNIA

SPECIAL SITE SIGN CO.

3225 Louise Street

No. 10118

Oakland, California Mar 27 1928 192....

Pay to the order of F. E. Jacobs \$10.00
 _____ Insured _____ Ten Dollars _____ Dollars

SPECIAL SITE SIGN CO.

Charles H King Jr.

Gen'l Manager

[Perforated]: PAID 5-12-28 90-4

[Tinted vignette, printed on face]:

Central National Bank of Oakland, Calif.

[Stamped on face]: 4-A 10

J D

[Reverse side]:

F E Jacobs

Credited to the Account of [Illegible] Jacobs Fresno—
Bank of Italy Branch [Illegible] Teller

[Stamped]:

Pay to the Order of Any Bank, Banker or Trust Co.
All Prior Endorsements Guaranteed May 10 1928
90-90 Fresno Main Office 90-90 Bank of Italy National
Trust & Savings Association Fresno, Calif.

Paid Thru Clearing House May 12 1929 Oakland
Branch - Bank of Italy National Trust & Savings Asso-
ciation 90-7 Oakland Calif.

(Testimony of Charles H. King)

This check is issued in payment of items as per statement following. The endorsement of payee on back will constitute a receipt in full

Sierra Ice Cream Sign location Rental 2/3/29 to 2/3/30
To CENTRAL NATIONAL BANK
90-4 OAKLAND, CALIFORNIA

SPECIAL SITE SIGN CO.

3225 Louise Street No. 11272

Oakland, California Mar 25 1929 19....

Pay to the order of F. E. Jacobs \$10.00

Insured ——— Ten Dollars ————— Dollars

SPECIAL SITE SIGN CO.

M. S. Montgomery, Sec'y

~~Gen. Manager~~

[Perforated]: PAID 4-12-29 90-4

[Tinted vignette, printed on face]:

Central National Bank of Oakland, Cal.

[Stamped on face]: Square

[Reverse side]:

F E Jacobs

Paid Thru Clearing House Apr 12 1929 90-7 Oak-
land Calif. Oakland Branch - Bank of Italy National
Trust & Savings Association

Pay to the Order of Any Bank, Banker or Trust Co.
All Prior Endorsements Guaranteed Apr 10 1929 90-90
Fresno Main Office 90-90 Bank of Italy National Trust
& Savings Association Fresno, Calif.

No. 5673-C Special Site vs. Foster & Kleiser Plf
Exhibit No. 175-A. Filed 1/30 1935 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: This was open country and there were miles of open space. At the time we secured our lease and built there were no other structures on the property.

Foster & Kleiser Company's office record card covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 175-F in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 175-F.]

[Crest]

Foster and Kleiser
COMPANY

CITY Fresno CLASS. Hwy LEASE No. 1498

LOC. Fresno SF Hwy E S 1-2/10 miles N Fresno
City Limits at Olive Ave

LEGAL Lot 126, Roeding Villa Colony lying East
of S. P. R. R.

LOC.

LEGAL

OWNER Francis E. Jacobs

ADDRESS Route ~~A~~, Box 156, Fresno

(Testimony of Charles H. King)

Am't		
Date	Offered By	Contact Data
3/18/28	EW	10 yrs from 3/18/28 @ 120.00 yr. when exclusive s/A form A1 from Francis E. Jacobs
6/21/30	LGD	Rental increased to \$120.00 - now exclusive Benhams sign removed as of 4/1/30
9/29/31	EW	Secured letter of reduction from Jacobs reducing rent to \$60.00 yr S/A to take effect 3/18/32 We to have exclusive rights and are to erect not more than two signs
*9/30/31	EW	Rental reduced from \$120.00 yr to \$60.00 yr S/A as of 3/18/32. Lease expires 9/18/38 - 1C

* This entry typewritten in red.

9/19/32	EW	Mr. Jacobs not inclined to cancel lease - delivered check paying rent to 3/18/33 and he said he would give the matter some thought and by next payment date might agree to cancellation, that is conditional for an agreed sum 2/1/33
3/23/33	EW	Mr. Jacobs says he could force F & K to live up to agreement but realizing how conditions are he is

(Testimony of Charles H. King)

willing to go farther than half way. He will give us cancellation provided we pay rent now due and additional years rent or total of 90.00

Date	Am't Offered	By	Contact Data
3/24/33		EW	Mr. Cole suggests mail 30.00 now due and carry on for another year; <i>belive</i> if next year we go out and pretend we are going to build he will ask us to cancel as he has planted new orchard and trees are close on <i>on</i> property line and he may not want boards on property
10/12/33		RED	Mr. Jacobs advises he either wants 75.00 cash or else we must continue to pay 60.00 yr. until 9/18/38 as per terms of lease. Will sign letter agreeing not to rent to anyone else for advertising purposes. This was his own proposition
11/ 5/33		RED	Paid Mr. Jacobs \$75.00 cancelling lease as of 12/15/34 - secured cancellation letter

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 175-F. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: The "Benhams" sign referred to on the card refers to our sign. Benhams ice cream was the copy on it at that time. It had replaced the Key Route Inn property shown on the photograph. The date June 21, 1930 referred to on the card is about the date our sign was removed. It was removed by Foster & Kleiser. The Mr. Cole referred to on the card was the Foster & Kleiser Fresno Branch Manager.

I received this letter from Mr. Jacobs dated March 19, 1928. That is written by Foster & Kleiser.

The letter referred to by the witness was thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibit 175-C in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 175-C.]

Fresno, California.

March 19, 1928.

Special Site Sign Company,
3225 Louise,
Oakland, California.

Gentlemen:

This is to notify you that you are to remove your sign from my property within 30 days from date hereof or I shall have to take the necessary action to have same removed.

I have been very lenient in my dealings with you in the past, although you have not lived up to the terms of your agreement. I refuse to be bothered further with your sign on my place and the unnecessary trouble I am put to each year to get you to pay the rental in accordance with your agreement.

In the past you have delayed payment for over a year, and you did not offer to make payment until you were ready to paint your board after you were already a year behind in your payment, and then you wanted to delay payment for the past year, and only after considerable

(Testimony of Charles H. King)

bother to me and advice from my attorney, I notified you I would remove your board, and you finally remitted for the year's rental.

Due to the fact that you have not lived up to the terms of your agreement, I hereby *concel* any further dealings with you, and shall expect your sign removed within 30 days as mentioned above.

Yours very truly,

F. E. Jacobs

R A Box 156 Fresno Cal

No. 5673-C. Special Site vs. Foster & Kleiser
Exhibit No. 175-C. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon handed to the jury for inspection.

Witness continuing: I sent the original of this letter dated March 28, 1928 to Mr. Jacobs. We had been there on this property for about seven years and I don't recall having had any trouble with Mr. Jacobs.

The letter last referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 175-D in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 175-D.]

March 28, 1928.

Mr. F. E. Jacobs,
Route A Box 156,
Fresno, Calif.

Dear Sir:

We are in receipt of your letter of the 19th inst. and, in reply, will state we entered into contract with you for the erection of sign on your property in good faith and have never refused to comply with any of the conditions as set forth therein.

We are retaining your letter threatening to destroy our sign in our files in case we should need same as evidence.

We do not intend to remove the sign and we take this opportunity to warn you against doing so as we will start suit against you immediately if you take any such action.

We are enclosing check #10118 paying rental for a year in advance, to Feb. 3, 1929.

Yours very truly,

SPECIAL SITE SIGN CO.,

BY

GENERAL MANAGER.

CHK-MSM

No. 5673-C. Special Site vs Foster & Kleiser Plf Exhibit No. 175-D Filed 12/26 1934 R. S. Zimmerman, Clerk by Cross Deputy Clerk.

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: I know that this letter from Jacobs was written by Foster & Kleiser because I compared it with this letter received from the Fresno Branch signed by Oscar C. Olsen, and I note the same typewritten defects in both letters. On each of these letters I have put a little red ink notation under certain letters of the typewriter.

The letter from Olsen together with the enclosures therein referred to was thereupon received in evidence and marked Plaintiff's Exhibit 175-E in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 175-E.]

[Crest]

Foster and Kleiser
— COMPANY —
ADVERTISING

South Van Ness and Hamilton Sts.
Telephone 32111

FRESNO, CAL.
August 19, 1930

Special Site Sign Co.
32nd & Louise Sts.
Oakland, California

Gentlemen:

Attached you will find a statement of your account for the cost of removing a sign. This work was completed for you on May 28th. Possibly this small item has been overlooked and we therefore trust you will favor us with your check without any further delay.

Very truly yours,

FOSTER AND KLEISER COMPANY

Oscar C. Olsen

Oscar C. Olsen

OCO:BRO

Office Manager

FRESNO BRANCH

[In pencil on face]:

F. E. Jacobs Property N of Fresno
Sierra Ice Cream 10 x 50'

Don't pay

(Testimony of Charles H. King)

Telephone 32111

Fresno, Cal., 5/28/30

South Van Ness and Hamilton Streets

To

Foster and Kleiser

COMPANY

ADVERTISING

Our Charge No. 8004

Terms Net Cash

Your Order No.

Special Site Company

Attention: Mr. Charles King

32nd & Louise Streets

Oakland, California

Advertising

Covering Period From

To

Cost of removing one highway bulletin from

Jacobs property in Fresno on May 23, 1930. 7.00

Fresno Branch—Invoice

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 175-E Filed 12/26 1934 R. S. Zimmerman, Clerk
 By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: Our sign was removed. We did not pick it up from Foster & Kleiser's yards in Fresno. We just left it there. We did not pay them \$7 for removing it. I don't believe Foster & Kleiser ever built this site. I have seen it several times since we removed and have never seen a sign on it.

Q. What is the value of the Jacobs location?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further grounds that it appears that the lessor himself cancelled the lease and that plaintiff did not lose the property by any act of Foster & Kleiser Company.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 148.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$552.

Witness continuing: We had a location two and one-quarter miles south of Marysville on the property of Victor Sartori.

(Testimony of Charles H. King)

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

Two leases to Special Site Sign Company dated May 15, 1919 and May 15, 1924 respectively, were thereupon received in evidence and marked Plaintiff's Exhibit 176-A in evidence. Thereupon, said leases constituting said exhibit were read to the jury.

Plaintiff's Exhibit 176-A in evidence was lost or misplaced. In lieu of the exhibit itself, counsel for the respective parties have stipulated that in substance and effect said lease dated May 15, 1919, was from one Victor Sartori to Special Site Sign Company for property two and a quarter miles south of Marysville, California, for advertising purposes, at a rental of \$8.00 per year, for a term of one year, and, at the option of the lessee, for five succeeding years; said lease dated May 15, 1924, was from the same lessor to Special Site Sign Company, of the same property as in the first mentioned lease, for advertising purposes, at a rental of \$10.00 per year for the term of one year and, at the option of the lessee, five succeeding years; both leases purporting to grant to the lessee the exclusive advertising privileges of the property.

A picture was thereupon offered in evidence by plaintiff, received and marked Plaintiff's Exhibit 176-B, and was thereupon exhibited to the jury.

Plaintiff's Exhibit 176-B was lost or misplaced. In lieu of the exhibit itself, counsel for the respective parties have stipulated that in substance and effect the said picture or photograph, Plaintiff's Exhibit 176-B was a

(Testimony of Charles H. King)

photograph showing a 10 x 50 foot painted bulletin of Special Site Sign Company situated on the property of Victor Sartori, described in the said leases, Plaintiff's Exhibit 176-A, and containing copy of Western Auto Supply Company.

Thereupon, plaintiff offered, and there was received in evidence and marked Plaintiff's Exhibit 176-E, in evidence, an office record card of Foster and Kleiser Company. Said office record card was thereupon read to the jury.

Plaintiff's Exhibit 176-E in evidence was lost or misplaced. In lieu of the exhibit itself, counsel for the respective parties have stipulated that in substance and effect said exhibit related to the property described in Plaintiff's Exhibit 176-A, and contained the following entries, and none others:

"5/1/24, lease to Foster and Kleiser Company, 10 years, from 7/15/24 at \$30.00 per year.

"3/6/25, tried to obtain lease on lot N. of house but same has been leased to Western States Life Ins. for 4 years from 1/1/25.

"2/9/27, made arrangements to have snipes removed.

"7/15/26, rental increased to \$40.00 per year as of July 15/26, account removing competitor.

"6/26/31, Cancel when T. D. comes through.

(Witness continuing): Our board was removed about July 15, 1926.

Two letters from Sartori to Special Site Sign Company dated respectively July 22, 1927 and May 4, 1929, were thereupon received in evidence, read to the jury, and

(Testimony of Charles H. King)

marked Plaintiff's Exhibits 176-C and 176-D in evidence respectively. Said exhibits were thereupon read to the jury.

Plaintiff's Exhibit 176-C in evidence is in words and figures as follows, to wit:

"July 22-1927.

Special Site Sign Co.
Oakland.

Dear Sir:

Having lease the all field to Kline and Foster you got to see them for a new contract.

Respectfully, V. Sartori."

Plaintiff's Exhibit 176-D in evidence is in words and figures as follows, to wit:

"Marysville, California
May 4, 1929.

Special Site Sign Company,
Gentlemen:

Your lease with us covering our property described as being on the Roseville-Red Bluff Highway about two and one-half miles South of Marysville expires May 15, 1929, and as other arrangements have been made it is necessary for you to take down your structure.

Yours very truly,
Victor Sartori,
May 4, 1929".

Witness continuing: I received these letters through the mail. I did not move our sign off at all. It was taken away and I never found it. I don't know who took it away.

(Testimony of Charles H. King)

Q BY MR. GLENSOR: What was the value of the Victor Sartori lease, Mr. King?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further ground that at the time the sign was removed plaintiff's lease had expired and, therefore, the formula which the witness is applying to his leases would have no application.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 149.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$1,104.

Witness continuing: We had a location on the property of Patterson on the State Highway north of Millbrae, 75 feet north of Center Street.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

A lease in favor of Special Site Sign Company dated November 13, 1926 was thereupon received in evidence and marked Plaintiff's Exhibit 177-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 177-A.]

Advertising Privilege

N. Millbrae Nov. 13, 1926

In consideration of Twelve (\$12.00) Dollars to be paid when the sign is erected I hereby lease to the undersigned, lessee, the advertising rights ~~wall of building~~ located at my property on Highway at Millbrae for advertising purposes for a period of one (1) year from date (at old 16M House) with privilege to said lessee to further use said space for a like consideration for five succeeding periods. Should lessee desire to cancel this contract, lessee shall give lessor 30 day's written notice before end of any term

Mrs A A Patterson

Owner

Agent

Tenant

Lessor

Address San Bruno Box 221

SPECIAL SITE SIGN CO.

3225 Louise St. Oakland, Calif.

By E R King,

Lessee

Pd by E R K Exp sh W/E 11/20/26
11/17

Sign taken down By F & K May 22 1928

(Testimony of Charles H. King)

[On reverse]

This lease directly N. of Clarence Estelles Chicken
Dinners E R K

\$12.00

Millbrae, Nov., 16, 1926

Received of Special Site Sign Co. twelve (\$12.00)
dollars cash as per lease for erection of sign on my prop-
erty on Highway near Millbrae

Signed

Mrs. A A Patterson

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 177-A Filed 12/26 1934 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Four Foster & Kleiser Company's office record cards
covering the property referred to by the witness were
thereupon received in evidence and marked Plaintiff's Ex-
hibit 177-F in evidence, and are in words and figures as
follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 177-F.]

[Crest]

*&

Foster and Kleiser
COMPANY

CITY S. F. CLASS Hwy LEASE NO. 1829

 LOC. S. F. L. A. Hwy LS 75 N Center 375 Millbrae

LEGAL See Lease

LOC. S. F. L. A. Hwy LS 108 N. Center 369 Millbrae U. S. Hwy. 101 (S. F.-L. A. Hwy) LS 108 N Center St. 369.75

LEGAL See Lease

 OWNER Mrs. A. A. Patterson Mrs. R. M. Patterson
Albert A.

Mr. & Mrs. R. M. Patterson

 ADDRESS ~~Box 221, San Bruno, Calif.~~
Box #221 San Bruno, Calif.

- Am't

Date Offered By

Contact Data

(Old Card in Transfer File)

 *2/20/28 WAM 2 yrs. from 3/1/28 @ \$150.00 yr.
-12/A Form A-1 from Mrs. A. A. Patterson.

(Testimony of Charles H. King)

- 2/28/28 M Letter to Spec. Site Sign Co.
- 3/ 7/29 KGH Cultivation call-OK.
- 11/12/29 KGH Request call later. Up 1/15/30
- *2/ 7/30 KGH 5 yrs. from 3/1/30 @ \$150.00 yr.
- 12/A Form A-1 from Mrs. A.
A. Patterson. (Community)
- 3/12/31 JFW Cultivation call. Return to file.
- *7/13/31 KGH 2 Yrs. from 8/1/31 @ \$50.00 yr.
- 12/A Form A1 from Mrs. R.
M. Patterson (Community)-1C
- 7/28/31 RB Order to T. D. 1-17 x 60 and
1-12½ x 47 Sub. Ill. and build
1-6 Sh.
- 1/ 5/32 KGH The initials R. M. Patterson are
correct.
- 7/ 1/32 KGH No further reduction advisable at
present. OK to send rental.
- *7/18/33 KGH 2 Yrs. from 8/1/33 @ \$10.00 yr.
- S/A Form A1 from Albert A.
& Mrs. R. M. Patterson. (Com-
munity) 1C

* These entries typewritten in red.

[Stamped across face]:

8/7/33 TRANS. TO NEW CARD.

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANY

CITY S. F. CLASS. Hwy LEASE NO. 1829

LOC St. Highway ES 1/2 Mi S. Uncle Tom's Cabin

LEGAL S. F.-L. A. Hwy. L/S 75 N Center St. 375
Millbrae

LOC.

LEGAL

OWNER Mrs. A. A. Patterson,

ADDRESS San Bruno, Calif. Box 221

Am't

Date	Offered	By	Contact Data
*			TRANSFER FILE

4/11/27 HWK Call back in evening after 6 P. M.

4/20/27 HWK Night call waited 1 hour not home.

6/13/27 M T. D. 60x15 Hwy. Bull. Unill. -
Bld. 12 1/2 x 47 Sub. Ill. Bull.

6/30/27 HWK Could not catch Paterson at Foundry must be night call.

(Testimony of Charles H. King)

- 8/17/27 HWK Made night call waited 1/2 hour.
no one home.
- 8/24/27 HWK Several calls no contact. (at once)
- 9/15/27 HWK Patterson will only give 2 yr. per-
mit at 120.00 asks return call in
few days.
- 9/23/27 HWK Patterson refuses to sign any form
of lease. 11/15/27
- 1/ 6/28 JFW Considerable time spent with Pat-
terson on this date. Slight prog-
ress. Objects to A-1 form and
claims to have offer from Corco-
ran for 2 boards in excess of \$120
yr. P. said he would like to think
over and make arrangements for
call about Feb. 1st. up 2/1/28
- 1/27/28 WAM Good interview with Patterson
quoted 12.50 per month for good
lease ask return call in few days.
- 2/20/28 WAM 2 yrs. from 3/1/28 @ 150.00 yr.-
12/A Form A-1 from Mrs. A. A.
Patterson. (Old card in lease en-
velope.)
- 2/28/28 M Letter to Spec. Site Sign Co.

[Stamped across face]:

SEE NEW CARD MADE UP

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANY

E. S.

LOCATION St. [^] Hwy 1/2 Mi S. Uncle Tom's Cabin
(@ North Milbrae adj. Lomita Park

Mrs. A. A.

OWNER ~~Hermina~~ PattersonADDRESS ~~10 A Rondell Place, S. F.~~ San Bruno, Cal.

AGENT Box 221

NUMBER 1829

CLASSIFICATION Highway

PHONE

Amt.			
Date	Offered	By	Remarks
			5 yrs from 1-15-19 at 30.00 yr.-- 4 bds and excl. priv.
4/19/22			Sec. 1 yr. from date at 7.50 a month, excl. priv.
9/18/22		RLC	Patterson gave us exclusive lease at that time he had binding con- tracts with Ph. Morton & small advertisers.

(Testimony of Charles H. King)

- 10/10/22 RLC Ofd. to write letters for Patterson to sign to Morton & others stating we had prior lease. This he agreed to do.
- 11/ 1/22 RLC Patterson refuses to write letters. Says we knew of contracts with others at time lease was signed & if we do not want location we can move our signs. Letting matters rest for a while. He has accepted \$30. from Morton binding him until Oct. 1923. Up 1/15/23
- 12/21/22 JJF Ownership OK.
- 5/26/23 RLC Chcek mailed, option renewed
- 8/27/23 EDY Noted
- 9/ 4/24 ARJ Mrs. Patterson says she will give us exclusive @ \$115.00 per yr when others expire. This will be for unlimited use.
- 10/ 8/24 ARJ Mrs. P. says has found leases but we will have to see her husband about leasing entire frontage.

(Testimony of Charles H. King)

Date	Amt. Offered	By	Remarks
12/ 8/24		ARJ	Mr. P. doesnt want to tie up the whole of frontage and wants to get bds we have on now down so he can improve. Think will eventually get exclusive title on this.
2/27/25		ARJ	Mrs. P. says Mr. P. is not going to give us new lease on this. Send check when due & I will try to get better lease. 4/1
4/ 9/25		ARJ	Del. check for current mo. Mrs. P. Will not sign until she sees her husband.
5/ 4/25		ARJ	Mr. P. will not give us good lease. Says ride as it. 7/1
8/10/25		ARJ	Took down Assoc Oil target leaves only Alta Coffee now, will not sign anything 11/1
11/ 6/25		ARJ	OK to stay here but unable to get good lease 1/15/26
2/11/26		JWD	Patterson has plans to lease prop. will reserve rights for advt. for us <i>is</i> we give increase otherwise T. D. could not get lease Told him would see 2/15/26.

(Testimony of Charles H. King)

- 5/13/26 M Unable to date to catch Mr. P. Talk with Mrs. P. claims has had offer of 12.50 per mo for smaller blds. up at once.
- 6/17/26 HSP Mrs. P. will make app. for me with husband 6/18 noon in South S. F.
- 5/1 /26 HSP Mr. "P" has not time to go into during ½ hr. noon period will have to make 5:15 call.
- 6/21/26 HSP Patterson not willing to do business at 120.00 yr. and wants change of location.
- 6/23/26 HSP Unable to make "P" accept
up 7/1/26
120.00 but OK to change structure temporarily. 8/1/26
- 7/19/26 M Order issued to cut weeds 8/1/26
- 9/ 7/26 VM Order issued to burnn off weeds.
- 1/ 5/27 BFC Specail Site Sign Co. have target South End of property.
- 2/ 2/27 BFC S. S. S. Co. paying 12.50 yr. Mrs. Paterson wants call made on husband at Enterprise Foundry at South City between 12:00 and 1:00 some day this week.
- 2/ 4/27 BFC Good contact with Paterson at his place of business. Must call at his home on a Saturday afternoon or some evening.

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANY

CITY S. F. CLASS Hwy ASSIGNED TO
LEASE NO. 1829

LOC. U. S. Hwy. 101 (S. F.-L. A. Hwy) LS
108 N Center St. 369.75 Millbrae

LEGAL See Lease

LOC.

LEGAL

OWNER Mr. & Mrs. Albert A. Patterson

ADDRESS Box #221, San Bruno, Calif.

Am't

Date	Offered	By	Contact Data
8/ 7/33		HMA	(See Old Card in Trans. File)
*7/18/33		KGH	2 Yrs. from 8/1/33 @ \$10.00 yr.- S/A Form A1 from Albert A. & Mrs. R. M. Patterson. (Com- munity) 1C

*This entry typewritten in red.

No. 5673-C Special Site Sign vs. Foster & Kleiser
Plf Exhibit No. 177-F. Filed 12/26 1934 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: Our first lease is in November, 1926 but we were on the property before that. I could not find the previous lease. We were on the property continuously. We built a 6x10 de luxe painted bulletin advertising Cuesta La Honda.

Four letters from Foster & Kleiser Company to Special Site Sign Company dated respectively February 29, 1928, March 10, 1928, March 30, 1928 and May 22, 1928 and a copy of a letter from Special Site Sign Company to Foster & Kleiser Company dated March 8, 1928 were received in evidence, read to the jury and marked Plaintiff's Exhibits 177-A, 177-B, 177-C, 177-D and 177-E respectively. Said Plaintiff's Exhibit 177-A in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 177-A.]

[Crest]

Foster and Kleiser

— COMPANY —

ADVERTISING

Eddy Street at Pierce

Telephone Walnut 10

Special Site Sign Company, San Francisco, Cal.
3225 Louise Street, February 29, 1928.
Oakland, California.

Gentlemen:

RE: SAN FRANCISCO-LOS ANGELES HIGH-
WAY

E/L 75' NORTH CENTER ST. MILBRAE

We find upon investigation that you are maintaining one of your advertising signs on the above described piece of property.

In view of the fact that this property is under an exclusive lease to this company, we are requesting that you have this sign removed from the above described premises in 10 days from this date.

Your courtesy in giving this matter your attention will be appreciated.

Yours very truly,

FOSTER AND KLEISER COMPANY.

W. J. Higgins

W. J. Higgins

Manager Lease Department.

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 177-A Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said Plaintiff's Exhibit 177-B in evidence is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT NO. 177-B.]

March 8, 1928.

Mr. W. J. Higgins, Manager Lease Dept.
Foster & Kleiser Co.,
Eddy St. at Pierce,
San Francisco, Calif.

Dear Sir:

RE: SAN FRANCISCO-LOS ANGELES HIGHWAY
E/L 75' NORTH Center St., MILBRAE.

Responding to your letter bearing above caption, will say our sign was erected under lease from the owner of this property. Kindly advise from whom your lease is secured and the date.

Upon receipt of this information the matter will be given our proper attention.

Very truly yours,

SPECIAL SITE SIGN CO.,
BY
GENERAL MANAGER.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 177-B Filed 12/26 1934 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said Plaintiff's Exhibit 177-C in evidence is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 177-C.]

[Crest]

Foster and Kleiser
— COMPANY —
ADVERTISING

Eddy Street at Pierce
Telephone Walnut 10

San Francisco, Cal.
March 10, 1928.

Special Site Sign Co.,
3225 Louise St.,
Oakland, Calif.

Attention: Mr. Charles H. King

Gentlemen:

Replying with your request in letter dated March 8th, we beg to advise you that the property on the S. F.-L. A. Highway EL 75' N Center Street, Millbrae is covered by

(Testimony of Charles H. King)

an exclusive lease dated April 19, 1922 for a period of six years which lease has just been renewed.

For your information, this lease is signed by Mrs. A. A. Patterson, who is the legal owner of this property. We have checked this matter very carefully and are quite positive that there is no question as to our rights in connection therewith, therefore, we feel that our request that you remove your structure from this property is a perfectly just one.

Yours very truly,

FOSTER AND KLEISER COMPANY

By W. J. Higgins

W. J. Higgins,

Manager Lease Department

WJH/EMG

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 177-C Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 177-D in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT NO. 177-D.]

[Crest]

Foster and Kleiser

— COMPANY —

ADVERTISING

Eddy Street at Pierce

Telephone Walnut 10

REGISTERED LETTER:

RETURN RECEIPT REQUESTED

San Francisco, Cal.

March 30, 1928

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

Attention: Mr. Charles H. King

Gentlemen:

We wrote you under date of March 10, 1928 regarding the advertising sign you are maintaining on the property owned by Mrs. A. A. Patterson, on the San Francisco-Los Angeles Highway E/L 75' N. of Center St., Millbrae, Cal.

In this letter we embodied a request that you remove your advertising structure, as the exclusive advertising

1418

(Testimony of Charles H. King)

privileges for this property were granted to us by Mrs. Patterson under the terms of our lease.

We find that to this date you have not complied with our request that you remove your structure and we are therefore notifying you again to vacate the premises as described above. We might also add that the lease we hold for the exclusive advertising rights to this property dates back several years and is still in force for some time to come. We have checked over the terms of this agreement very carefully and we feel that there can be no question to our right in exercising the concession it grants us.

Your courtesy in giving this matter your immediate attention will be greatly appreciated.

Yours very truly,

FOSTER AND KLEISER COMPANY

W. J. Higgins

W. J. Higgins

VHM:H

Manager Lease Department

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 177-D Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said Plaintiff's Exhibit 177-E in evidence is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT NO. 177-E.]

[Crest]

Foster and Kleiser
— COMPANY —

ADVERTISING

Eddy Street at Pierce
Telephone Walnut 10

San Francisco, Cal.

May 22, 1928

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

Gentlemen:

In taking down your sign on Mrs. Patterson's property on the San Francisco-Los Angeles Highway North of Center Street at Millbrae, the property owner refused to allow us to remove this sign from the premises after it had been taken down, and it is now in her possession.

(Testimony of Charles H. King)

Mrs. Patterson states that a year's rental is due her from you and she explained to us that she will keep this sign until you have paid this rental.

Yours very truly,

FOSTER AND KLEISER COMPANY

W J Higgins M

W. J. Higgins

VHM:H

Manager Lease Department

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 177-E. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Witness continuing: Without regard to the fact that the Foster & Kleiser office record card shows that their lease in 1922 was for one year, at the time we took our prior lease, whenever it was, there were no other structures on the property and I did not know of any lease to Foster & Kleiser or any other advertising concern of the advertising rights on this property. Our structure was built on there shortly after the time we got our first lease and was on there continuously until it was removed.

I did not ever authorize Foster & Kleiser either orally or in writing to take down our sign. As I recall, our rent was paid to Mrs. Patterson at the time. She had never made a demand on us for payment of rent. We never recovered our sign.

(Testimony of Charles H. King)

Q What was the value of the leasehold, Mr. King?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further grounds that there is no proof that plaintiff had any right upon the premises at the time its lease was cancelled.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 150.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$187.

MR. CLARK: I understand there will be no change in theory that these so-called value figures are all potential gross figures, are they not, or income that you thought you might have received?

A Yes.

Witness continuing: We had a location on the San Francisco-Los Angeles Highway approximately 620 feet north of Center Street, Millbrae.

(Testimony of Charles H. King)

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

Witness continuing: The drawing on the back of this lease to Special Site *Site* Company dated October 13, 1926 was put on at the time the lease was secured. It is supposed to illustrate the location of the property and the signboards as I wanted them erected.

The lease referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 178-A in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 178-A.]

Advertising Privilege

Millbrae Oct 13th 1926

In consideration of Fifteen dollars (\$15.00) cash receipt of which is hereby acknowledged— I hereby lease to the undersigned, lessee, the Space for 6x12 sign wall of building located at Willows, bet.. 16 mile H and Willows Camp at Satori's Sandwich Place for advertising purposes for a period of One year from date with privilege to said lessee to further use said space for a like consideration for five succeeding periods. Should lessee desire to cancel this contract, lessee shall give lessor 30

(Testimony of Charles H. King)

day's written notice before end of any term no sign to be erected in front of our sign—

Owner

Agent

H Sartori Tenant

Lessor

Address San Bruno Bx 558

SPECIAL SITE SIGN CO.

3225 Louise St. Oakland, Calif.

By C H King, Lessee

Sign destroyed Nov 8 1927

M. Daley, Millbrae P. O. (no other address) *gest* check.

[On back]:

[Diagram of premises.]

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 178-A Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: I paid the rental on this property by a check dated January 25, 1927.

Two Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibit 178-G in evidence and are in words and figures as follows, to-wit:

1424

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 178-G.]

[Crest]

Foster and Kleiser
COMPANY

Running No. from English prop. 255' approx.

S. F.-L. A. Hwy State LS app. 625' N. of Center St.
(16-mi. house)

LOCATION ~~ES~~ Highway at ~~NL~~ Millbrae
Mrs. M.

OWNER ~~Chas. A.~~ Daley

ADDRESS Millbrae, Cal.

AGENT

NUMBER 2294

CLASSIFICATION Highway

PHONE

TRANSFER FILE [in red]

	Amt.		
Date	Offered	By	Remarks
4 ϕ /29/22		EHW	Sec. 1 yr with 5 yr option @ 15.001 form B. dating from 5/1/22/
12/19/22		JJF	Ownership OK. Option exercised. Paid to 5/1/24.

(Testimony of Charles H. King)

- 1/10/24 RLC Mrs. English one of owners, phoned today to have someone call. Will see her this week.
- 1/14/24 RLC This property divided between owners. Mrs. Daley retaining north 255'. this lease number covers north part only. New number given balance sec. from Mrs. A. English, sister (lease #6106) *Ms.* Daly has allowed 4 targets to be erected. Our former lease good but might have trouble on technicality so sec. 10 yrs. from 5/1/23 @ \$20.00 yr. ann. form B. Note to MacKillop to order targets off.
- 5/ 5/24 Ownership OK.
- 1/ 5/27 BFC Hollywood Advertising Co. Special Site Sign Co. and Cadillac target on this property.
- 2/ 4/27 M Letter to Spec. Site To T. D. & Letter to Hollywood Adv. Co. 3/1
- 8/24/27 HWK Targets still on property. 3 calls on owner no contact as yet.

*[Stamped on face of card]: SEE NEW CARD MADE UP.

(Testimony of Charles H. King)

[On back] :

Amt.			
Date	Offered	Date	Remarks
8/29/27		HWK	Mrs. Daley says portion of this leased, tenant in the North back in 1 month.
9/30/27		M	Letter to Mrs. Daley to have signs removed. 12/1
10/12/27		JFW	Mrs. Daley says OK whatever we do to remove Comp. Bds. Claims she has <i>le</i> leased property and expects to build in very short time. 12/1
12/12/27		JFW	All targets but Cadillac down. Up 3/1
1/28/28		WAM	Cultivation call.

DIAGRAM

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANY

Cancel 20.00

CITY S. F.
CLASS. Hwy.
LEASE NO. 2294

LOC. S. F.-L. A. Hwy LS approx. 625 N of 16 Mi House
(Center St) approx. 205 MillbraeLEGAL
LOC.
LEGAL

OWNER Mrs. M. Daley
ADDRESS Millbrae, Calif.

(Old Card in Transfer File)

	Am't		
Date	Offered	By	Contact Data
5/ 1/23		RLC	*10 yrs from 5/1/23 @ \$20.00 yr.—Ann. Form "B" from Mrs. M. Daley.
3/ 7/29		KGH	Cultivation call. Mrs. English said her sister still owns property. Up 5/1
6/26/29		KGH	Cultivation call. OK. Letter confirming oral agreement to cancel lease as of May 1, 1932 the date to which rental paid.

(Testimony of Charles H. King)

7/ 3/31 KGH Check before next payment date.
Up 4/1/32

Letter confirming oral agreement
to cancel lease as of May 1, 1932
the date to which rental paid.

4/28/32 EG Canc. letter accepted and filed lease
env. LWC.

*This item appears in red ink on card.

[Stamped on card] CANCELLED May 18 1932

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 178-G. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: I never heard about there being
some joint ownership of this and some other property
between Daly and English.

A letter from Foster & Kleiser Company to Special
Site Sign Company dated February 3, 1927 and a letter
from Special Site Sign Company to Foster & Kleiser
dated February 11, 1927 were thereupon received in evi-
dence, read to the jury, and marked Plaintiff's Exhibits
178-C and 178-D in evidence respectively. Said Plain-
tiff's Exhibit 178-C in evidence is in words and figures as
follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 178-C.]

[Letterhead]

[Crest]

Foster and Kleiser
— COMPANY —

ADVERTISING

Eddy Street at Pierce
Telephone Walnut 10

San Francisco, Cal.

February 3d, 1927

REGISTERED

Special Site Sign Company,
308—12th Street,
Oakland, California.

Gentlemen:

RE: SF-LA HIGHWAY LS APP. 625' N.

CENTER ST.—MILLBRAE

It has come to our attention that you are maintaining two of your small signs, approximately 6x10' in dimension, on the above described piece of property, the adver-

1430

(Testimony of Charles H. King)

tising privileges of which are under an exclusive lease to this company.

As we are desirous of having this property cleared as soon as possible, we would appreciate your attention in removing your signs within ten days from date.

Thanking you in advance for your attention to this matter, we are

Yours very truly,

FOSTER AND KLEISER COMPANY

W. J. Higgins M

W. J. Higgins,

VHM:C

Manager Lease Department.

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 178-C. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 178-D in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 178-D.]

February 11, 1927.

Foster and Kleiser Co.,
Eddy Street at Pierce,
San Francisco, Calif.

Attention: W. J. Higgins, Mgr. Lease Dept.

Gentlemen:

We acknowledge receipt of your registered letter of the third inst., regarding our lease on the S. F.-L. A. Highway at Millbrae, which property, you state, is also under lease to your Company.

As per telephone conversation with you today, the writer will investigate the circumstances surrounding this case and report to you in a few days.

Very truly yours,

SPECIAL SITE SIGN CO.,

BY

CHK-MSM

GENERAL MANAGER.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 178-D. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Q Did you investigate, Mr. King?

A Yes, sir.

Q What did you find?

MR. STERRY: That calls for a conclusion and hearsay.

THE COURT: Objection overruled. State what you found.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 151.

A I called on the lessor, Mr. Sartori, and he told me my lease was all right, and to pay no attention to Foster & Kleiser, and he would run them off the property.

Witness continuing: Mr. Sartori was not the owner of that property. He was the tenant in possession.

Two letters from Foster & Kleiser Company to Special Site Sign Company dated March 15, 1927 and June 8, 1927 were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibit 178-E and 178-F in evidence respectively. Said Plaintiff's Exhibit 178-E in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 178-E.]

[Envelope]

[Crest]

Foster and Kleiser
COMPANY

REGISTERED No. 361065 Return Receipt Requested
[Cancelled Postage Stamp]

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

21604

[Letterhead]

[Crest]

Foster and Kleiser
— COMPANY —
ADVERTISING

Eddy Street at Pierce
Telephone Walnut 10

March 15, 1927
San Francisco, Cal.

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

1434

(Testimony of Charles H. King)

Gentlemen:

RE: S. F.-L. A. Highway, E/L 625' North of
Center Street Millbrae

It is now more than one month since our receipt of your letter of February 11th, referring to the above described location, wherein you advised us that you would investigate the status of your use of this property and forward us a report in a few days.

As we have not heard from you since February 11th, regarding this matter and in view of the fact that we are desirous of utilizing this property for our own purposes, we are requesting that you remove your advertising structures within fifteen days from this date.

Thanking you for your courtesy in giving this matter your attention, we are

Yours very truly,

FOSTER AND KLEISER COMPANY

W. J. Higgins M

W. J. Higgins

VHM;AH

Manager Lease Department

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 178-E. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 178-F in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 178-F.]

[Letterhead]

[Crest]

Foster and Kleiser
— COMPANY —
ADVERTISING

Eddy Street at Pierce
Telephone Walnut 10

San Francisco, Cal.

June 8, 1927

“REGISTERED LETTER—
RETURN RECEIPT REQUESTED”

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

Gentlemen:

RE: SAN FRANCISCO-LOS ANGELES
HIGHWAY E/L 625' NORTH OF
CENTER STREET, MILLBRAE

Under date of March 15, we wrote you regarding the above described location upon which you are maintaining one of your advertising panels: As we explained in our letter of that date, the advertising privileges of this location are under an exclusive lease to this Company.

As we have not received a reply from you to this date, we assume that you acknowledge our full rights to this

(Testimony of Charles H. King)

location, and as we are about to utilize this property for our own purposes, we will have your sign removed and stored in our yard at 1675 Eddy Street, San Francisco, where it may be obtained by you at your earliest convenience.

Yours very truly,

FOSTER AND KLEISER COMPANY

W. J. Higgins M

W. J. Higgins

VHM/PA

Manager Lease Department.

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 178-F. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Witness continuing: I never had any communication from either of the alleged owners, English or Daley. At the time we took our lease and built our sign there were no other advertising structures on the property. I had no knowledge of any lease or advertising rights of any other company. We were never ordered off the property by any person other than Foster & Kleiser. We had two 5 by 12 miniature de luxe bulletins on it. There is a notation on the lease showing when our sign was removed. It is Mrs. Montgomery's handwriting but I told her to write it on there. That is the date we discovered that it was destroyed.

Q What was the value of the H. Sartori lease

(Testimony of Charles H. King)

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further grounds that plaintiff's lease was obtained from a tenant and defendant Foster & Kleiser's lease was obtained from the owners many years before plaintiff's lease was obtained and that there is no further showing that plaintiff's landlord had any right whatsoever on the property. It is objected to on the further ground that all damages with reference to this location are barred by the statute of limitations.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 152.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$408.

Q BY MR. GLENSOR: Do you recall that you had two signs on there?

MR. CLARK: Objected to as immaterial.

A Yes, sir, one structure, but it was two signs.

Q BY MR. GLENSOR: What was it, a V?

A Yes.

(Testimony of Charles H. King)

THE WITNESS: But there was nothing said about it when we put it up that way. It was understood what we were going to do there.

MR. CLARK: We object to the testimony on the ground he is now attempting to vary his own title.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates Exception No. 153.

MR. CLARK: I now move to strike out all proof of damage with respect to one sign on the grounds that plaintiff's own lease limits him to one sign and he has calculated his damages on two.

THE COURT: Let it stand.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 154.

Witness continuing: We had a location on the property of E. P. Williams on the Los Angeles-Fresno Highway, 1.2 miles south of Bakersfield.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

A lease to Special Site Sign Company dated May 11, 1926 was thereupon received in evidence and marked Plaintiff's Exhibit 179-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 179-A.]

[Crest]

OAKLAND
SPECIAL SITE SIGN CO.
CALIF.

ADVERTISING PRIVILEGE

Memorandum of Agreement, made this 11 day of May 1926 by and between E P Williams the party of the first part, and SPECIAL SITE SIGN CO., party of the second part.

Witnesseth, That for the consideration hereinafter named, to be paid by second party to first party, the said first party hereby grants to said second party the exclusive use of the following described premises, with free access and entrance to and upon same at any and all times during the term hereof:

Los Angeles Hiway 3 miles S of Bakersfield situated in the City ofState of Calif for a period of five years from date for the purpose of constructing and maintaining painted, printed, or illuminated signs or devices for advertising purposes, including the placing and maintaining of devices for the illumination of such signs with necessary connections therefor. In considera-

(Testimony of Charles H. King)

tion of which the party of the second part agrees to pay the party of the first part the sum of 17.50 Dollars, payable yearly for each year of said term during which said premises are used for said advertising purposes.

This agreement shall continue in force from year to year after the term hereof unless terminated at the end of such term, or any such additional year, upon written notice of either party served not less than thirty days before the end of such term or additional year; provided, however, that if the said property is sold, or the possession thereof required by the first party for the purpose of building upon, or is leased for other than advertising purposes, then this contract shall terminate, and the first party shall refund to the second party the unearned portion of rent paid by the second party, if any, and in this event the second party shall remove all signs and connections upon ten days' written notice from the first party. In the event that the said premises shall be altered or changed in such manner that the advertising value thereof, is destroyed, or impaired, or should the view of such premises become obstructed or the use thereof prevented by law, the second party shall have the right to cancel this agreement and have a refund of the unearned portion of rent already paid, if any.

The party of the second part is hereby authorized to remove any and all signs of any other person or corporation on said rented premises, and shall be the owner of

(Testimony of Charles H. King)

and have the right to remove all signs, material, and equipment placed on said premises under this agreement.

It is expressly understood that SPECIAL SITE SIGN CO. is not bound by any stipulations, representations or promises not printed or written on this contract.

Signed	E P Williams	} Owner } Tenant } Agent
.....		
Address	Bakersfield Box 54	
		R. 21

Accepted by SPECIAL SITE SIGN CO.

Per C B

Lost April 1929

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 179-A Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: We built a 10 by 50 highway bulletin on that property. A check dated October 1, 1929 was the last payment of our rent as far as I know. We paid our rent to May 11, 1930.

Foster & Kleiser Company's office record card covering the property referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 179-G in evidence, and is in words and figures as follows, to-wit:

1442

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 179-G.]

[Crest]

Foster and Kleiser
COMPANY

CITY Fresno
CLASS. Hwy
LEASE NO. 1502

LOC. Fresno LA Hwy WS 1-2/10 miles S of Bakersfield
LEGAL S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec 7, twp 30, Range 28
LOC.
LEGAL

OWNER E. P. & Louisa Williams
ADDRESS Route 2, Box 54, Bakersfield

Date	Am't Offered	By	Contact Data
3/ 3/28		EW	10 yrs from 3/3/28 @ 50.00 to 75.00 S/A form A1 from E. P. & Louisa Williams, (community)
5/ 8/31		EW	Letter from Yonge Elliott Co. regarding removal of their sign
5/11/31		EW	Letter to Yonge Elliott Co. we will investigate and they will hear from us further
5/12/31		EW	Mr & Mrs. Williams sold one acre comprising 100' frontage beginning at Rankins property and run-

(Testimony of Charles H. King)

ning 100' to a Mr. Odell of Bakersfield—property was sold on contract and Odell is in arrears several months with payments which forfeits Odells claim or interest of any kind on property. Williams told Yonge Elliott Co. man they sold this acre and Yonge Elliott rented space from Odell—our records do not indicate we ever received notice of the sale of this acre from Williams—the first information of sale was during today's contact. 6/1/31

6/10/31

EW

Mr. Cole says he and Mr. Denton have called on Mr. Williams and after consulting his atty Mr. Williams has decided to give Mr. Odel more time in which to bring up to date back payments before closing the sale and taking property back—we have placed Brew sign on property again and are awaiting final disposition of property between Odel & Williams

8/1/31

[Stamped on face of card] CANCELLED Feb 5 1932

(Testimony of Charles H. King)

[On back]:

	Am't		
Date	Offered	By	Contact Data
8/10/31		RED	Mr. Cole decided not to cancel at this time 3/28/32
12/23/31		RED	Cancellation letter signed by Mr. Williams & Mrs. Williams
12/29/31		MDC	OK to cancel as of 1/1/32

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 179-G Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: When we built there were no other structures on the property. The Yonge-Elliott sign must have been put there afterwards. I don't recall that it was on the property.

MR. GLENSOR: I offer in evidence as Plaintiff's Exhibit 179-C, a letter from E. P. Williams to Special Site Sign Company, dated March 19, 1927.

MR. CLARK: That is objected to as hearsay and incompetent.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 155.

(Testimony of Charles H. King)

The letter referred to by Mr. Glensor was thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibit 179-C in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 179-C.]

Southern Cafeteria 10x50

Route 2—Box 54

Bakersfield Calif

Mar, 19—27

Special Site Sign Co.

This is only to notify you that I have rented all the site on my property to the Foster & Kleiser Co. and your rent will hold good till the year 1931, which rent will be paid to me till then,

And Oblige

E. P. Williams

R 2, Bx 4 Bakersfield Calif

(May Card)

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 179-C. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

A letter from E. P. Williams to Special Site Sign Company dated November 15, 1927 and a letter from Special Site Sign Company to E. P. Williams dated November 22, 1927 were thereupon received in evidence and marked Plaintiff's Exhibit 179-D in evidence, and are in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 179-D.]

Bakersfield Calif.

Nov. 15-27

Special Site Sign Co.

Please advice me if you still like to renew your sign rent it is due May 11, 1927.

And Oblige

E. P. Williams

Bakersfield Calif R 2 Box 54

Chk 9099

November 22, 1927.

Mr. E. P. Williams,
Box 54, Route 2,
Bakersfield, Calif.

Dear Sir:

Your letter of November 15th was duly received asking us if we wished to continue our sign on your property, and advising that rental was due on May 11th.

(Testimony of Charles H. King)

We think there must be some mistake on your part as, in looking the matter up, we find our check for \$17.50 was mailed you on May 20, 1927. The same was cashed by you on May 26th and shows your endorsement, also the endorsement of V. P. Morehouse. Our check number is 9099.

We trust this will bring the matter to your remembrance, and beg to remain

Yours very truly,

SPECIAL SITE SIGN CO.,

BY

GENERAL MANAGER.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 179-D. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: After sending that last letter we remained on the property, as far as I was concerned.

A letter from Foster & Kleiser Company to Special Site Sign Company dated April 20, 1929 was thereupon received in evidence and marked Plaintiff's Exhibit 179-F in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 179-E.]

[Crest]

Foster and Kleiser
COMPANY
ADVERTISING

South Van Ness and Hamilton Sts.
Telephone 32111

FRESNO, CAL.

April 20, 1929

Special Site Sign Company
Oakland, California

Gentlemen:

We wish to advise that your bulletin just south of Bakersfield advertising the Southern Cafe is half blown over. We will take this bulletin down for you and stack it on the location if you so desire, as it is in a very unsightly condition at present.

Thanking you for an early reply, we are

Very truly yours,

FOSTER AND KLEISER COMPANY
M. D. Cole

MDC:BRO Fresno Branch Manager
FRESNO BRANCH

[Imprint California Raisin Festival.]

No. 5673-C. Special Site Sign vs. Foster & Kleiser
Plf Exhibit No. 179-E. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

(Testimony of Charles H. King)

Witness continuing: After receipt of Plaintiff's Exhibit 179-E in evidence and before replying to it, I investigated. I found that about four panels had been pried off with a pry bar. The marks of the bar were visible on the top stringers and also on the sections. We never rebuilt the property.

A letter from Special Site Sign Company to Foster & Kleiser Company dated April 23, 1929 was thereupon received in evidence and marked Plaintiff's Exhibit 179-F in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 179-F.]

April 23, 1929.

Mr. M. D. Cole, Manager
Foster & Kleiser Co.,
South Van Ness & Hamilton Sts.,
Fresno, Calif.

Dear Sir:

Your letter of April 20th received. We have noted the condition of the sign referred to in your letter and we would advise you to keep your hands off of our property hereafter.

Very truly yours,
SPECIAL SITE SIGN CO.,
BY
GENERAL MANAGER.

CHK-MSM

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 179-F. Filed 12/26 1934 R. S. Zimmerman. Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: We had received these letters advising that Williams had rented the property to Foster & Kleiser. We made no effort after that to renew our lease with Williams. This property is on that long stretch of highway from Bakersfield to the Grape Vine. It is straight and all open.

Q What was the value of the Williams lease?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further ground that there is no showing whatever that Foster & Kleiser Company were in any way responsible for the loss of the location and the sign.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 156.

(Testimony of Charles H. King)

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$552.

Q BY MR. CLARK: I am assuming, if I may ask, that this is based upon a further 6-year continuance of the lease?

A Yes, sir.

Witness continuing: We had a sign on the Great Highway near Rivera Street in San Francisco. I was unable to find our lease. I don't know what became of it. I know we had a lease at one time because I got it myself.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

Witness continuing: I can't recall just now when we built or when we got our lease. We built a 20 x 50 illuminated bulletin. I have four rental checks indicating that we were on the property in 1921. 48th Avenue is the Great Highway and Rivera Street was formerly known as R Street. We had only one location from Hittell and that is the only location along the Beach Highway at that time that I recall.

Three Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibit 180-E in evidence, and are in words and figures as follows, to-wit:

1452

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 180-E.]

[Crest]

Foster & Kleiser
Company

CITY S.F. CLASS. Hwy LEASE NO. 1479

LOC. Great Hwy & Rivera NE 301x50
LEGAL NE Great Hwy & Rivera 301x50 Irreg. depth
LOC.
LEGAL

OWNER Franklin T. Hittell & Charles J. Hittell,
by Franklin T. Hittell
ADDRESS 808 Turk St., S.F.

Am't

Date	Offered	By	Contact Data
4/15/31		EMG	(See Old Card in Trans. File)
*4/ 8/31		F	3 yrs. from 4/1/31 @ \$60.00 yr.— Ann Form A-1 from Charles J. Hittell per Franklin T. Hittell, Atty-in-fact & Franklin T. Hittell, Owner. (Non-Community) 1C & 3C
4/ 4/33		F	Verbal permission @ \$30.00 for balance of term.
1/11/34		JJF	Owners of record: Franklin T. Hittell and Chas. J. Hittell, 808 Turk St. S.F.

LOC. Out-Box & Rivalry in (Burr)
 LEGAL Phone-6169--104-19
 LOC Great Hwy & Rivalry NE 301x50
 LEGAL NE Great Highway & Rivalry 301x50 Irrig. depth
 OWNER Franklin T. Hittell, et al
 ADDR. 908 Turk St. S.P.

DATE ART OFFERED BY

CONTACT DATA

(See Old Card in Trans. File)

11/18/29 HMA 5 yrs. from 4/1/25 @ \$60.00 yr. - Ann. Form A-1 from Franklin T. Hittell, et al.

3/11/30 BM Hittell has renewal; and is waiting for his brother to arrive from the south.

4/4/30 JFW 2-16x70 Bulletins on this location will have to be moved back from highway 15 feet on acct. of widening. Must be moved by 4/15.

4/4/30 BS Ord. Issued to T.D. & Rebid. 2-16x70 Sub. Ill.

9/30/30 BM Hittell prefers to let this lease run on from year to year and says that we will not be disturbed. Does not care to sign renewal lease at this time.

1/16/31 P Short interview. Some progress. To see him 2/1. ^{UP} 2/1/31

2/3/31 P B. Very pleasant but cannot understand why we actually need re-nwal. Said that he will take up with brothers and will write us in regard to outcome of discussion. ^{UP} 2/1/31

DATE ART OFFERED BY CONTACT DATA

4/A/31 P 3 yrs. from 4/1/31 @ \$60.00 yr. - Ann Form A-1 from Charles J. Hittell for Franklin T. Hittell, Atty-in-Fact & Franklin T. Hittell, Owner. (Non-Community) 1C & 3C

EXHIBIT
 No. 180
 Filed 19
 R. R. ZIMMERMAN, Clerk
 Deputy Clerk

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

NE Cor Gt Hwy & R 301' being lot
 LOCATION St., - Hwy-501 - - - - -
 OWNER Hittell-Estater-Catharina H. Hittell, et al
 ADDRESS 808 Turk St. Franklin
 AGENT
 COMPANY 12, Block 2169
 NUMBER 1479
 CLASSIFICATION Highway
 PHONE

DATE	AMT. OFFERED	BY	REMARKS	TRANSFER FILE
8/17/21		W	5 YRS from 2-1-20 at 15.00 YR Phoned Miss H. re adjoining lot - Now leased to S.S.S. Co. She says we can have. Call up next week when brother is home. Up 8/22/21	4 2-44
11/15/22		JJF	Ownership OK.	
9/12/21		EHW	Sec. new lease to Inc. 50' on prop. as well as property covered by former lease, 3 yrs. from 1/22 2/22 @ 60.00 per yr. pay. ann.	
1/2/25		HSP	5 yrs. from 4/1/25 @ 60.00 yr. ann. form A-1. scratched.	
2/29/28		KGH	Cultivation OK . - Catharina Hittell passed away otherwise ownership the same.	
3/1/28		KGH	Make ch. to Franklin Hittell et al.	

No. 5673 C

DHS Ex 180 E

(Testimony of Charles H. King)

- 2/12/34 LWC We will renew if we can get for \$30.00 a year flat otherwise cancel.
- *2/27/34 F 10 Yrs. from 4/1/34 @ \$30.00 yr.—Ann. Form A1 from Charles J. Hittell, per Franklin T. Hittell, Atty-in-fact and Franklin T. Hittell. (Non-Community) 1C 3C

* These entries written in red ink.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 180-E. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: The Miss H. referred to on the office record card is Miss Hittell, the owner of the property. I note from the card that Foster & Kleiser secured a lease on the northeast corner which was the property we were on. At the time we took the lease and built I did not know that they were on the adjoining property or had any rights there. Nobody ever said anything to me about a lease to any other advertising company on that corner lot. I took the lease myself.

A letter from Foster & Kleiser Company to Special Site Sign Company dated February 28, 1922 was thereupon received in evidence and marked Plaintiff's Exhibit 180-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 180-A.]

[Crest]

Foster and Kleiser
— COMPANY —

OUTDOOR ADVERTISING

273-295 Valencia Street
Telephone Market 10

San Francisco, Cal.

February 28, 1922

Special Site Sign Company
Oakland, California

Gentlemen: Re-Great Highway & Riviera

Having just entered into a lease for the entire property at the North East corner of "R" Street and the Great Highway, will you kindly arrange to pay rental to this office on and after April 1st, 1922.

Yours very truly,

FOSTER AND KLEISER COMPANY

By E. D Young

Manager Space Department

EDY:b

CHK

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 180-A Filed 12/26 1934 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: After receipt of that letter I paid the rent on that property to Foster & Kleiser. One of these checks marked Plaintiff's Exhibit 180-C in evidence, dated March 10, 1922, is the check that I sent.

A letter from Foster & Kleiser Company to F. B. Heider dated February 27, 1923, together with a note at the bottom thereof, were received in evidence and marked Plaintiff's Exhibit 180-B in evidence, and are in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 180-B.]

[Crest]

Foster and Kleiser
— COMPANY —

OUTDOOR ADVERTISING

273-295 Valencia Street
Telephone Market 10

San Francisco, Cal.

February 27, 1923

Mr. F. B. Heider
860 Geary St.
San Francisco, Cal.

RE: Great Highway North Riviera

Dear Sir:

Please be advised that we now find it necessary to ask the removal of your highway display advertising BRUNS-

1456

(Testimony of Charles H. King)

WICK TIRES and adjoining Robert's Cafeteria on the property mentioned above.

Will you kindly effect the removal of this structure within fifteen days, and oblige

Very truly yours,

FOSTER AND KLEISER COMPANY

By E D Young

Manager Lease Department

Paid F & K 3/23/22 to 3/23/23 \$12.50

NOTE King I just rec'd this so am forwarding it at once for you to look out for

T B H.

EDY:-

VMB

GENERAL OFFICE

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 180-B Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

(Testimony of Charles H. King)

Witness continuing: That was our sign referred to in that letter but they sent the note to Heider by mistake. We sold our bulletin to Foster & Kleiser. The Great Highway in San Francisco is a highway that parallels the ocean beach and on Sundays and holidays there are tremendous crowds there. It is a good advertising location. I endeavored to secure other advertising sites to take the place of this one after we lost it but was not able to do so. All the vacant property seemed to be under lease to Foster & Kleiser. I personally tried to canvass the situation and tried to get the property. This ocean beach front extends from about two miles from Sloat Boulevard to the Golden Gate Park, and at that time it was not heavily built up. It was wide open.

The term of that lease was for one and five years. I was never ordered off by Hittell. The first intimation I had about getting off the property were the letters from Foster & Kleiser. That was the only thing that was said or written to me about getting off. I sold the sign to them. I took the matter up after I got this letter that was addressed to Heider and which Heider sent to me. There was no question about it being our sign, for Heider had no signs on there. I don't recall who it was in Foster & Kleiser's office with whom I took it up. After looking at this letter from Mr. McNeill, dated June 16, 1923, I remember that it must have been Mr. McNeill.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 180-D in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 180-D.]

[Crest]

Foster and Kleiser

— COMPANY —

OUTDOOR ADVERTISERS

Eddy Street at Pierce

Telephone Walnut 10

San Francisco, Cal.

June 16, 1923

Special Site Sign Company

308 12th St.,

Oakland, California

Gentlemen:

Enclosed you will find copy of Bill of Sale covering Brunswick bulletin located at Great Highway & Rivera together with our check #75500 in the amount of One Hundred Twelve & 50/100 (112.50) Dollars, being the purchase price of the bulletin size 20x50'.

Very truly yours,

FOSTER AND KLEISER COMPANY

D. R. McNeill Jr

San Francisco Manager.

VBS.

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 180-D. Filed 12/26 1934 R. S. Zimmerman, Clerk
By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: The conversation was that we were to take it off or sell it to them if we preferred to do that, so we sold it to them.

Q Which was the cheapest or best thing for you to do, sell it or move it?

MR. CLARK: That is immaterial and calls for a conclusion of the witness.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 157.

A At that time the only thing we could do was to sell it. We couldn't get another location there suitable for it, and it was a very large board. We had no place else to re-erect it and we sold it.

Q What was the value of the Hittell leasehold?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further ground that it appears that plaintiff's lease had fully expired and that plaintiff recognized the right of Foster & Kleiser by paying rent to them and that it appears from the witness' own testimony that

(Testimony of Charles H. King)

it was a voluntary surrender by him of whatever rights, in any he had, in the sale to Foster & Kleiser Company. I further object to any testimony on damages with reference to this location on the ground that it is barred by the statute of limitations.

THE COURT: The rule of practice probably ought to be the other way, to exclude it if there is uncertainty, but for the present I do not think it will do any harm to leave the evidence in, and I hope to be able to make a discriminatory ruling on it within a short while.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 158.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$1,200.

Witness continuing: The loss of this site caused the cancellation of our Brunswick Tire account which was some 10 or 12 bulletins.

We had a location on the property on Ellen Ewing on the southeast corner of Mission and Trumbull Streets, Lots 1 and 12.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

Witness continuing: I do not have the written lease on it. I made a search for it. I took the lease myself.

(Testimony of Charles H. King)

Looking at two rental checks for \$6 each, I recall that that was the rent we were paying on the Ewing property.

The lease was on the pink form for a term of one and five. I think it ran from the date shown on the first rental check, April 1, 1921. When I prepared this memorandum in the file I had the lease. According to my memorandum, the lease ran from April 1, 1918 to April 1, 1923.

BY MR. CLARK:

This memorandum is taken from the books and records, part from the books and part from leases and checks and letters. This "Date lost" was gotten from our lease. From this memorandum I testified that we had a lease from April 1, 1918 for five years. I got the information from the lease itself. The memorandum shows that I had the lease before me. This notation that I lost the lease April 1, 1923 shows me that I had the lease before me.

Two Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibits 181-A and 181-B in evidence, respectively. Said Plaintiff's Exhibit 181-A in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT NO. 181-A.]

[Crest]

Foster and Kleiser
Company

State Highway Heider "Federal"

LOCATION SE Mission and Trumbell, Lots 1 & 12,
67' 2x221

OWNER Jessie M. Ewing Grace Ewing et al

ADDRESS 2221 Scott St.

AGENT

NUMBER 4333

CLASSIFICATION SUR

PHONE Fill. 2821

Block 5869 Lot 12

Am't.		
Date	Offered	By Remarks
7/13/22	RC	7/14/22 Out.
7/19/22	RC	Mrs. Williams (nee Ewing) says Heider has until April 1923. Lease with S. S. S. Co. signed by King 6.00 per yr. Ofd. 15.00 yr. after exp. of lease. Will consider with sisters. Call after Sept. 10, 1922.

(Testimony of Charles H. King)

- 9/ 8/22 RC Mrs. Williams says sister still out of town. Call after 10/15/22.
- 9/18/22 RC Miss Ewing says no decision yet.
- 10/ 2/22 RC No change. Will rent to those who pay most
- 11/22/22 RC Sec. 5 ys from 4/1/23 @ 20.00, form B., contin clause
- 2/14/24 Ownership OK
- 10/14/27 MRG Mr. Ewing says competitor offers a better proposition. - prefers F & K to know why we dont build. up 1/1/28
- 1/13/28 MRG Miss Ewing will take up with sisters will see next week.
- 1/24/28 MRG Miss Ewing & Sisters want 50.00 or nothing.
- 2/14/28 MRG Miss E. stands on 50.00 leaving town up 3/15
- 3/23/28 MRG Same status no progress.
- 3/27/28 MRG Offered 35.00 & 50.00 when built.
- 4/ 4/28 MRG Submitted lease for consideration.

[Written in red on face]: 8/25/30 TRANS. TO NEW CARD

(Testimony of Charles H. King)

[On back]:

Am't.		
Date	Offered By	Remarks
*4/13/28	MRG	5 yrs. from 4/1/28 @ \$35.00 yr. - Ann (Increase rental to \$50.00 when built) Form A-1 scratched from Grace Ewing et al.
*8/20/30	RM	5 yrs. from 4/1/28 @ \$35.00 yr. - Ann (Inc. to \$50.00 when any sign blt. to be paid in advance & inc. to be prorated for any fraction of a year) Form A-1 (Sale Clause) from Grace, Florence N., Jessie M. & (Mrs.) Ellen Ewing Williams by Grace Ewing. (Non-Community) 3C

*These entries written in red.

DIAGRAM

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 181-A. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Said Plaintiff's Exhibit 181-B in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PAINTIFF'S EXHIBIT No. 181-B.]

[Crest]

Foster and Kleiser

Company

Renew

CITY S. F. CLASS. Sur LEASE NO. 4333

LOC. Mission & Trumbell SE 67' 2x221

LEGAL SE Mission & Trumbell 67'x221

LOC.

LEGAL

OWNER Grace Ewing et al

ADDRESS 2221 Scott St., S. F.

Am't.

Date	Offered By	Contact Data
8/25/30	EMG	(See Old Card in Trans. File)
*8/20/30	RM	5 yrs. from 4/1/28 @ \$35.00 yr. - Ann (Inc. to \$50.00 when any sign blt. to be paid in advance & inc. to be prorated for any fraction of a year) Form A-1 (Sales Clause) from Grace, Florence N., Jessie M. & (Mrs.) Ellen Ewing Williams by Grace Ewing. (Non- Community) 3C & 1C
3/ 5/31	LWC	Check for space. Hold rental. Up 3/25/31
*3/ 5/31	DMC	Rental paid to 4/1/31.
4/ 2/31	LWC	OK to release rent.
5/ 4/31	EG	Orders issued to Cons. 25' Ill. Post. *Ord. cancelled.

(Testimony of Charles H. King)

- 9/12/31 EG No structures to be blt. on this loc. during period of 12 mos. covered by Sales Contract with Street & Co. covering adjoining wall of bldg. at 4175 Mission St. See lease env.
- 9/21/32 LWC Letter to Street & Co. confirming arrangement made with Mr. Brockelhurst that they pay us \$5. mo. in return for which we will not build adv. structures on this location which would obstruct their wall. (See letter in lease env.)
- 9/27/32 HMA Memo to Accounting Dept. to bill Street & Co. \$5.00 per mo.

Up 3/1/33

[Stamped on face]: CANCELLED Apr 21 1933

*This entry written in red ink.

[On back]:

Am't.

- | Date | Offered | By | Contact Data |
|---------|---------|----|--|
| 3/23/33 | F | | Miss Ewing will not renew at less than \$60.00 the amt. offered her by Street Ford Co. to keep approach to his wall clear. |
| 3/29/33 | LWC | | Cancel lease and card. |

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 181-b. Filed 12/26 1934 R. S. Zimmerman,
 Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

BY MR. GLENSOR:

The office record card refers to Heider. He was never on the property that I know of. Street and Company referred to on the card are Ford automobile agents in San Francisco.

MR. GLENSOR: I offer in evidence a letter from Florence N. Ewing to Special Site Sign Company, dated November 8, 1922, a copy of a letter from Special Site Sign Company to Florence N. Ewing, dated November 22, 1922, and a letter from Florence N. Ewing to Mr. King, dated November 23, 1922, as Plaintiff's Exhibits 181-D, 181-E and 181-F, in evidence, respectively.

MR. CLARK: I object to the introduction in evidence of the two letters from Florence N. Ewing, dated November 8, 1922 and November 23, 1922, respectively, as hearsay and incompetent.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 159.

Said letters were thereupon received in evidence, read to the jury and marked Plaintiff's Exhibits 181-D, 181-E and 181-F, in evidence, respectively. Said Plaintiff's Exhibit 181-D in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 181-D.]

San Francisco

Nov. 8 - 1922.

2221 Scott St.

Special Site Sign Co:-

Dear Sirs:-

For our property on Mission and Trumbull Streets in San Francisco - Lots 1 and 12 in Block 5869 - we have been offered by another Advertising Company very much more than you have paid. Your lease expires on April 1st of next year.

C H K.

Please let us know whether you care to release it — and at what price. Otherwise we will lease it to them.

Awaiting an early reply,

Very truly yours -

Florence N. Ewing.

(Miss F. N. Ewing).

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 181-D. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 181-E in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT NO. 181-E.]

Nov. 22nd, 1922.

Miss Florence N. Ewing,
No. 2221 Scott St.,
San Francisco,
Calif.

Dear Miss Ewing:—

We have your letter of November 8th in regard to the small Federal sign which we maintain on your property at Mission and Trumble Streets, San Francisco.

As our business relations have been agreeable in the past, it seems to us that you should give us an opportunity to pay what our competitors have offered for the location which we now occupy. It seems only fair to us that since we secured the location from you originally and have lived up to our agreement in every way, that we should not be forced by them to pay more than they themselves are willing to pay.

Kindly give us an opportunity to pay what they have offered for this location.

Thanking you for your kindness in this matter, we are,

Yours very truly,

SPECIAL SITE SIGN COMPANY.

By

General Manager.

CHK:V

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 181 E. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said Plaintiff's Exhibit 181-F in evidence is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 181-F.]

2221 Scott St.

San Francisco - Nov. 23'-22.

My dear Mr. King: -

Your letter of Nov. 22nd in answer to mine of Nov. 8th came one day too late as we signed the lease with Foster and Kleiser Co. yesterday afternoon. I enclosed an addressed stamped envelope asking for an early answer and put off the other firm's agent too many times to wait longer. They are paying \$20 a year in advance for what you paid \$6.

Will you please see that your sign is removed at the expiration of the lease - April 1st of next year.

Very truly yours

Florence N. Ewing.

(Miss F. N. Ewing)

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 181 F. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Witness continuing: We removed the sign from this location ourselves. We had a 10 by 25 foot painted bulletin carrying Federal Tire copy.

Q What was the value of that lease?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain,

(Testimony of Charles H. King)

and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. I object to any testimony on damages with reference to this location on the ground that it is barred by the statute of limitations, and on the further ground that the loss of the lease on this particular location was due to the fault of the plaintiff in that the lessor notified him on November 8, 1922 to make an offer and he did not reply until November 22nd.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 160.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$432.

Witness continuing: We had a sign on the property of T. B. McDaniel on the Chico-Durham Highway.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

A lease to Special Site Sign Company from McDaniel dated January 4, 1924 and a renewal from McDaniel dated January 11, 1928, and a lease from A. J. Quiggle to Special Site Sign Company dated November 8, 1929 were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 182-A, 182-B and 182-C in evidence, respectively. Said Plaintiff's Exhibit 182-A in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 182-A.]

[Crest]

OAKLAND
SPECIAL SITE SIGN CO.
CALIF.

ADVERTISING PRIVILEGE

Memorandum of Agreement, made this 11th day of January 1928 by and between T. B. McDaniel the party of the first part, and SPECIAL SITE SIGN CO., a corporation of California, with principal place of business at 3225 Louise St., Oakland, Calif.

Witnesseth, That for the consideration hereinafter named, to be paid by second party to first party, the said first party hereby grants to said second party the exclusive use of the following described premises, with free access and entrance to and upon same at any and all times during the term hereof: Property owned by T. B. McDaniel, ½ mile South of Chico, at Edgar Slough situated in the City of State of California for a period of five years from January 4, 1929 for the purpose of constructing and maintaining painted, printed, or illuminated signs or devices for advertising purposes, including the placing and maintaining of devices for the illumination of such signs with necessary connections

(Testimony of Charles H. King)

therefor. In consideration of which the party of the second part agrees to pay the party of the first part the sum of Thirty & no/100 (\$30.00) Dollars, payable annually in advance for each year of said term during which said premises are used for said advertising purposes.

This agreement shall continue in force from year to year after the term hereof unless terminated at the end of such term, or any such additional year, upon written notice of either party served not less than thirty days before the end of such term or additional year; provided, however, that if the said property is sold, or the possession thereof required by the first party for the purpose of building upon, or is leased for other than advertising purposes, then this contract shall terminate, and the first party shall refund to the second party the unearned portion of rent paid by the second party, if any, and in this event the second party shall remove all signs and connections upon ten days' written notice from the first party. In the event that the said premises shall be altered or changed in such manner that the advertising value thereof, is destroyed, or impaired, or should the view of such premises become obstructed or the use thereof prevented by law, the second party shall have the right to cancel this agreement and have a refund of the unearned portion of rent already paid, if any.

(Testimony of Charles H. King)

The party of the second part is hereby authorized to remove any and all signs of any other person or corporation on said rented premises, and shall be the owner of and have the right to remove all signs, material, and equipment placed on said premises under this agreement.

It is expressly understood that SPECIAL SITE SIGN CO. is not bound by any stipulations, representations or promises not printed or written on this contract.

Accepted by SPECIAL SITE SIGN CO.

Per Charles H King Jr

Signed T B McDaniel } Owner
 } Tenant
 } Agent

Address Route 3, Box 200-A,
 Chico, Calif.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 182-A Filed 12/26 1934 R. S. Zimmerman,
 Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 182-B in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 182-B.]

Oakland, Cal., 1- 4- , 1924

In Consideration of 30.00 (\$.....) Dollars per year, payable in advance installments yearly, the undersigned, Lessor, hereby leases to SPECIAL SITE SIGN CO., of 308 Twelfth Street, Oakland, California, Lessee, its successors or assigns, the premises (with the privilege of access through and upon same) known and described as follows, to-wit: on my property at Edgar Slough $\frac{1}{2}$ ' mile South of Chico (no small signs in front of our board) for the exclusive erection and maintenance of advertising signboards thereon. Rent to commence when the signboards are erected on said property, and on like terms for the five (5) succeeding years, unless terminated by the Lessor as hereinafter provided, or terminated by the Lessee giving ten (10) days' written notice of termination of this Lease, and removing said signboards from said property.

It is Expressly Agreed, that the Lessor may order the advertising signboards removed at any time by giving the Lessee thirty (30) days' notice in writing, in case the Lessor sells the premises, or improves same by erecting a building on said premises, or leases said premises for other than advertising purposes, and upon consummation of said sale, or improvement thereon, evidenced by passing of Deed or Building Permit, respectively, the Lessor shall re-

(Testimony of Charles H. King)

fund to the Lessee the rent paid in advance pro rata, from the time of the removal of its boards. In case the boards should be removed pursuant to any such notice, and the proposed sale or improvement should not be made forthwith, then the Lessee shall again have the exclusive right to replace its boards on said premises, and this Lease shall continue in force for the term above mentioned.

Should the View of the boards become in any way obstructed, the Lessee may terminate this Lease and the Lessor shall refund to the Lessee the rent paid in advance, pro rata, for the unexpired term above mentioned.

All Boards placed on the premises under this Lease shall remain the property of the Lessee, and may be removed by them at any time.

SPECIAL SITE SIGN CO., Lessee,
By Chas Battin

T B McDaniel
Lessor.
Address Chico

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 182-B Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 182-C in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 182-C.]

[Crest]

OAKLAND
SPECIAL SITE SIGN CO.
CALIF.

ADVERTISING PRIVILEGE

Memorandum of Agreement, made this eighth day of November, 1929 by and between A. J. Quiggle the party of the first part, and SPECIAL SITE SIGN CO., a corporation of California, with principal place of business at 3225 Louise St., Oakland, Calif.

Witnesseth, That for the consideration hereinafter named, to be paid by second party to first party, the said first party hereby grants to said second party the exclusive use of the following described premises, with free access and entrance to and upon same at any and all times during the term hereof: Property owned by A. J. Quiggle, ½ Mile South of Chico, at Edgar Slough situated in the City of State of California for a period of five years from November 8, 1929 for the purpose of constructing and maintaining painted, printed, or illuminated signs or devices for advertising purposes, including the placing and maintaining of devices for the illumination of such signs with necessary connections therefor. In consideration of which the party of the second part agrees to pay the party of the first part the sum of Thirty & no/100ths Dollars, payable annually in

(Testimony of Charles H. King)

advance for each year of said term during which said premises are used for said advertising purposes.

This agreement shall continue in force from year to year after the term hereof unless terminated at the end of such term, or any such additional year, upon written notice of either party served not less than thirty days before the end of such term or additional year; provided, however, that if the said property is sold, or the possession thereof required by the first party for the purpose of building upon, or is leased for other than advertising purposes, then this contract shall terminate, and the first party shall refund to the second party the unearned portion of rent paid by the second party, if any, and in this event the second party shall remove all signs and connections upon ten days' written notice from the first party. In the event that the said premises shall be altered or changed in such manner that the advertising value thereof, is destroyed, or impaired, or should the view of such premises become obstructed or the use thereof prevented by law, the second party shall have the right to cancel this agreement and have a refund of the unearned portion of rent already paid, if any.

The party of the second part is hereby authorized to remove any and all signs of any other person or corporation on said rented premises, and shall be the owner of and have the right to remove all signs, material, and equipment placed on said premises under this agreement.

(Testimony of Charles H. King)

It is expressly understood that SPECIAL SITE SIGN CO. is not bound by any stipulations, representations or promises not printed or written on this contract.

Accepted by SPECIAL SITE SIGN CO.

Per Charles H King Jr

Signed A J Quiggle { Owner
 Tenant
 Agent

Address 1023 Main St., Chico, Calif.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 182-C Filed 12/26 1934 R. S. Zimmerman,
 Clerk By Cross Deputy Clerk

Witness continuing: Quiggle purchased the property from McDaniel and we renewed our lease. We built on the property. There were no other signs or structures there at that time, nor were there any when we took our first lease. Nothing whatever was said to me about any other leases on the property. The structures at the north end of the barnyard were Foster & Kleiser's signs. My sign was moved to the rear or north end of the barnyard. Foster's & Kleiser's signs were on the west side of the barnyard. After looking at this letter from Western Auto Supply Company and refreshing my recollection, I find that our sign was removed some time before November 17, 1928. I went up there and found it had been moved back to the back end of the barnyard about 200 feet from where we had erected it originally and that these two Foster & Kleiser boards had been built on the property. That made a very second-rate location out of our sign. Prior to its removal it was what we call a head-on shot. After its removal it was still a head-on

(Testimony of Charles H. King)

shot but there were hay wagons and all sorts of things in front of it and there was a barnyard in the foreground; that does not improve an advertising structure at all. I made an inquiry to ascertain who had moved it but I don't know of my own knowledge who did. Mr. McDaniel was the owner at that time. That was before he sold it to Quiggle. We left our sign there. It was sold under a contract. The people on the contract stayed with us until it was out. They did not place that location again after that. I did not get the same price for it in its present location.

Q What is the value of the Quiggle site?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 161.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$1,104.

Witness continuing: I should say the distance between the northeast curve and the west line of that barnyard property is 200 feet. The barnyard is approximately 200 feet square. When we erected our structure it was about eight or ten feet back of the fence which

(Testimony of Charles H. King)

would be about the same distance from the highway. After our board had been moved to the rear of the barnyard it still faced towards Durham, south. The Foster & Kleiser boards faced east and were parallel with the barnyard fence so that the only view of them was rounding the corner.

The approach was easily as much as 200 feet, probably more, and the barnyard would probably be a trifle more than 200 feet square. I could not say what the distance was from the northeasterly point of the curve to the southeast corner of the barnyard. I never paid much attention to that east end of the barnyard.

BY MR. GLENSOR:

The Foster & Kleiser boards were built parallel with the fence, north and south. Whatever shot they had was people coming up and rounding the curves in automobiles or approaching from the secondary road from the east.

BY MR. CLARK:

The boards were 50 foot painted bulletins. They had, parallel to the west fence, a 50 foot painted bulletin nearest to the highway and at right angles to it, and it had another 50 foot painted bulletin adjoining it. The west fence was a board fence 6 feet high, and the east fence was the same. Foster & Kleiser didn't put their bulletins where ours had been because it was not as good a location.

Two Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 182-E and 182-F in evidence,

(Testimony of Charles H. King)

respectively. Said Plaintiff's Exhibit 182-E in evidence is in words and figures as follows, to wit:

[PLAINTIFF'S EXHIBIT NO. 182-E.]

[Crest]

Foster and Kleiser
COMPANY

Roseville-R.B. Hwy RS $\frac{1}{2}$ mi S of Chico city limits
LOCATION ~~Misc. State Hwy~~ S. $\frac{1}{2}$ mi. S. of Chico
585.9

OWNER ~~C. P. Weed~~ T. B. McDaniel

ADDRESS Box 234, Chico, Calif.

AGENT Genl Del.

NUMBER 00772

Sacto

CLASSIFICATION Hwy.

PHONE

Fct of Sec 36 Twp 22 N. R. 1 E

Amt.			
Date	Offered	By	Remarks
9/23/22		BS	5 yrs. from 7/15/19 @ \$25.00 pr. yr. Pay. Ann. By SF 1951
12/15/23		JO	10 yrs from 12/15/23 @ 60.00 per yr.—Ann. "B" (JO) T. B. McDaniel

[Stamped on face of card]:

November 29, 1929 Trans. to new card.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 182-E Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said Plaintiff's Exhibit 182-F in evidence is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 182-F.]

[Crest]

Foster and Kleiser
Company

CITY Sacto CLASS. Hwy LEASE NO. 772

LOC. Roseville-Red Bluff Hwy RS $\frac{1}{2}$ Mi S of Chico
585.9 City Limits

LEGAL Fct of Sec 36 Twp 22 NR I E

LOC.

LEGAL

OWNER A. J. Quiggle

ADDRESS 1023 Main St. Chico, Calif.

Am't

Date	Offered	By	Contact Data
11/29/29	EC		See old card in trans. file.
*11/16/29	MW		10 Yrs. from 12/15/29 at \$60.00 Yr.—Ann. Form A1 from A. J. Quiggle (Non-community).
7/ 7/31	CET		Take Down and cancel

* This entry written in red ink.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 182 F. Filed 12/26 1934 R. S. Zimmerman.
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: We had a location at Beresford, California, on the east side of the San Francisco-Los Angeles Highway, 900 feet north of the Beresford Crossing.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

Witness continuing: I haven't any lease on that property because I assigned it to Foster & Kleiser. We secured a lease on this site and built a 10 by 25 foot bulletin, and subsequent to that Foster & Kleiser erected one or two signs on the property. Mr. Thompson, the general manager of the Foster & Kleiser Company, told me that they wanted to develop the property and if I would assign my lease to Foster & Kleiser they would allow me to stay on the site rent free as long as they had advertising rights on the property.

We were on the property for a while but we did not stay there.

Two letters from Foster & Kleiser Company to Special Site Sign Company dated November 16, 1926 and December 3, 1926 were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 183-B and 183-C in evidence, respectively. Said Plaintiff's Exhibit 183-B in evidence is in words and figures as follows, to wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 183-B.]

[Crest]

Foster and Kleiser
COMPANY
ADVERTISING

Eddy Street at Pierce
Telephone Walnut 10

SAN FRANCISCO, CAL.

November 16, 1926

REGISTERED LETTER RE-
TURN RECEIPT REQUESTED

Special Site Sign Company,
308-12th Street,
Oakland, California.

Gentlemen:

You are maintaining your 25x10 advertising panel "Federal Tire" copy on property known and described as the B. C. Murray property on the S.F.-L.A. Highway, EL North of Beresford Station, the advertising privilege of which is under an exclusive lease to us.

In view of the fact that we are desirous of utilizing the space now occupied by your sign for our own purposes, we are requesting that you have your structure removed within ten days from date.

1486

(Testimony of Charles H. King)

Thanking you for your courtesy in giving this matter your immediate attention, we are

Yours very truly,

FOSTER AND KLEISER COMPANY

W. J. Higgins

W. J. Higgins,

Manager Lease Department

VHM/EMG

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 183-B in evid Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 183-C in evidence is in words and figures as follows, to wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 183-C.]

[Crest]

Foster and Kleiser
— COMPANY —
ADVERTISING

Eddy Street at Pierce
Telephone Walnut 10

SAN FRANCISCO, CAL.

December 3, 1926.

REGISTERED LETTER: RE-
TURN RECEIPT REQUESTED

Special Site Sign Company,
308 - 12th Street,
Oakland, California.

RE: B. C. MURRAY PROPERTY SF-LA HWY.
E/L NO. OF BERESFORD STATION.

Gentlemen:

Under date of November 16, we wrote you with reference to the above property on which you are maintaining one of your 25x10 advertising panels with "Federal Tire" copy. We advised you that the advertising privileges of this location is under an exclusive lease to us and has been for some years.

We have not heard from you to this date regarding the location mentioned, and as we are contemplating utilizing

(Testimony of Charles H. King)

the space now occupied by your structure, it will become necessary for us to remove your sign.

We trust that you will see the equity of our action in this matter.

Yours very truly,

FOSTER AND KLEISER COMPANY

W. J. Higgins,

W. J. Higgins

Manager Lease Department.

VHM/PA

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 183-C. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: Our sign was taken down. I don't know whether it was built out before it was taken down but I received a letter from Heider stating that it was. Heider was a competitor of mine, another independent. I got along all right with him. We had a 10 by 25 Federal Tire bulletin on that property.

Five Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibit 183-D in evidence, and are in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 183-D.]

[Crest]

Foster and Kleiser
Company

CITY S.F. CLASS Hwy. R.R. LEASE NO. 4658

LOC. S.F.-L.A. Hwy. LS 900 Beresford Sta Beresford

LEGAL See Lease

LOC.

LEGAL

OWNER Burleigh C. Murray & Burleigh H. Murray

ADDRESS Box 4, San Mateo, Calif.

Date	Am't Offered	By	Contact Data	(Old Card in Transfer File)
*2/11/29		KGH	3 yrs. from 2/1/29	@ \$100.00 yr.—Ann Special Form from B. C. & B. H. Murray. (Non-Community)
5/ 3/29		M	T.D. 1-50x10 Hwy. Bull.	(Blank) Bld. 1 - 12½ x 42 Hwy. Bull. (Pioneer Paper Co.)
4/30/30		M	T.D. — 1-12½x42 Hwy	Bltn (Formerly Pianaci Prop) per memo CWH 2/11/30
8/26/30		M	Order issued T.D. 1-10x50 R.R. Bltn (Blank). 42 Hwy Bultn. (Magic Way) per memo Benson 8/26/30.	

(Testimony of Charles H. King)

STRUCTURES REMOVED—
CHECK FOR REBUILD OR
CANCELLATION

Up 9/26/30

- 9/29/30 KGH Work done. No reduction in rental.
O.K. to file.
- 12/20/30 EG Ord. Iss. to Ill. 1-12½x42 Hwy.
Bltn. per Plant Dept.
- 1/21/32 RCB Or. Iss. T.D. 1-12½x42 Hwy
Unill. Blank former Pioneer Paper
Co.
- 1/22/32 KGH Murrays wil renrew. Want time
to consider reduction on other loc.
- 2/17/32 KGH Left leases with O'Donnell.
- *2/29/32 Class D—No Lease Contact at
Least Annually.
- *3/15/32 KGH 2 Yrs. from 2/1/32 @ \$100.00
yr.—Ann Spec. Letter of Permis-
sion from B.C. & B. H. Murray
(Non-community)—No notarial.
- 7/29/32 RB Or. iss. remove Ill. from 12½x42
Hwy Ill. formerly Russells for
Hotel Whitcomb.

* These entries written in red ink.

[Stamped on face of card]:

3/19/34 TRANS. TO NEW CARD.

(Testimony of Charles H. King)

[On back]:

Date	Amt' Offered	By	Contact Data
7/18/33	LWC	Try for reduction at anniversary. Up 12/15/33	
*2/28/34	"Class D"—No Lease—Contact at Least Annually. Up 7/1/34		
1/ 2/34	KGH	Took up with Mr. John O'Donnell, atty the renewal of above location @ \$25.00 per structure unsold and \$50.00 sold. He will discuss with Murrays and advise.	
*2/27/34	KGH	1 Yr. from 2/1/34 @ \$66.67 yr.— Ann. Spec. Letter Permission from B. C. & B. H. Murray. (Non- Community) 1C	
	*"Class C"—Yr. to Yr. or 1 Yr. Lease—Contact at Least annually. Up 11/1/34		

* These entries written in red ink.

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

(A) S. F.-L.A. Hwy. LS 900' N Beresford Sta. 6
 LOCATION ~~EL~~ Highway from Beresford Station
 North,
 B. H. (B) Beresford $\frac{1}{8}$ M N on LSR
~~C.A. Jury~~ and B.C.Murray,

ADDRESS ~~154~~ 26th Ave.—Box 4, San Mateo, Cal.

AGENT

NUMBER 4658

CLASSIFICATION Highway

PHONE RR

Also RR same lease

Date	Amt. Offered	By	Remarks	TRANSFER FILE
11/ 2/22		RLC	Sec. 2 yrs from 2/1/22 @ 100.00 a yr, form B., no contin. clause (Inc. RR Loc.)	
1/ 7/24			Ownership OK	
2/20/24		M	Bld 50x10 — Sub Union Oil ld	Bull unill M

(Testimony of Charles H. King)

- 4/20/24 RLC 2 yrs. from 2/1/24 @ \$100.00 yr.
ann. form B. (covering not more
than four signs)
- 1/ 5/25 Form letter returned. Ownership
verified.
- 1/ 4/26 HWK Left A-1 form Murray will mail in
- 1/15/26 HWK 3 yrs from 2/1/26 @ \$100.00 yr.
Ann Special form from B.C. and
B.H. Murray
- 11/15/26 M Letter to spec. site to remove 25x10
structure.
- 11/18/26 M Bld. 12½x42 Hwy. Bull. (Salinas
Cafe)
- 12/ 3/26 M Letter to Spec. Site to remove.
- 12/ 6/26 M Order issued to T.D. Spec. site
25x10.
- 9/ 6/28 M T.D. 1-50x12 Sub. Bull. (Blank
Bld. 1-12½x42 Hwy. Bull. (Wat-
son Stab.)
- *2/11/29 KGH 3 yrs. from 2/1/29 @ \$100.00 yr.
—Ann Special Form from B. C. &
B. H. Murray. (Non-Community)

* This entry printed in red ink.

[Stamped on face of card]:

SEE NEW CARD MADE UP

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANYLOCATION EL Highway from Beresford Station
North, 1000' bet. S.P. tracks & St. Hwy

LEGAL

OWNER ~~C. A. Jary~~ & B. C. Murray & B. H. MurrayADDRESS ~~154 26th Ave. S.F.~~ Box 4, San Mateo, Cal.

AGENT

LEASE NO. 4658

CITY

CLASSIFICATION Railroad

PHONE

* Also Hwy—same lease.

	Amt.		
Date	Offered	By	Remarks
11/ 1/22		RLC	Sec. 2 yrs. from 2/1/22 @ \$100.00 form B. no contin. clause (Inc. Hwy Loc.)
4/20/24		RLC	2 yrs. from 2/1/24 @ \$100.00 yr. ann. form B. covering not more than four signs.
1/ 5/25			Form letter returned. Ownership verified.

* This entry written in red ink.

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANY

LOCATION Beresford—1/8 Mi North on RSRR.

OWNER Mrs. A. Hyne, Belmont, San Mateo Co., Cal.

ADDRESS

AGENT

NUMBER 1022

CLASSIFICATION railroad

PHONE

	Amt.		
Date	Offered	By	Remarks

5 yrs from 4/1/20 @

[Stamped on face of card]:

CANCELLED

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
CompanyCITY S.F.
ASSIGNED TO 6CLASS. Hwy
LEASE NO. 4658

LOC. S.F.-L.A. Hwy. LS 900 N Beresford Sta Beresford
LEGAL See LeaseLOC.
LEGAL

OWNER Burleigh C. & Burleigh H. Murray
ADDRESS Box 4, San Mateo, Calif.

Am't			
Date	Offered	By	Contact Data
3/19/34	HG		(See Old Card in Trans. File)
*2/27/34		KGH	1 Yr. from 2/1/34 @ \$66.67 yr.— Ann. Spec. Letter Permission from B.C. & B. H. Murray. (Non- Community) 1C "Class C"—Yr. to Yr. or 1 Yr. Lease—Contact at Least Annually.
11/ 7/34		KGH	Bring up later. Up 11/1/34 Up 12/15/34

No. 5673-C. Special Site vs. Foster & Kleiser Plf Ex-
hibit No. 183-D. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Q What was the value of the lease?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. I further object to any testimony on damages with reference to this location on the ground that it is barred by the statute of limitations.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 162.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$432.

Witness continuing: We had a location on Mission Street at the corner of School Street.

MR. CLARK: I object to any testimony on damages with reference to this location on the ground that it is barred by the statute of limitations.

THE COURT: Objection overruled.

To which ruling of the court the defendant then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 163.

(Testimony of Charles H. King)

Witness continuing: I was not able to find our lease on that property. I received this letter signed by Mr. E. D. Young, who is now Assistant Branch Manager at Los Angeles. He was then connected with the San Francisco Branch.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 184-A in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 184-A.]

[Crest]

Foster and Kleiser
— COMPANY —

OUTDOOR ADVERTISERS

Eddy Street at Pierce
Telephone Walnut 10

SAN FRANCISCO, CAL.
November 1st 1923

Special Site Sign Company,
308 - 12th Street,
Oakland, California.

In Re: NW Cor. School and Mission
ATTENTION OF MR. CHAS. KING, PRESIDENT.
My dear Mr. King:

When the old Federal Tire bulletins were recently taken down, apparently the one at Mission and School streets was overlooked. I recall your telling me among others this would be removed, and if it is agreeable to you we shall be glad to take this structure down and have it stored

(Testimony of Charles H. King)

in our yard subject to your call for which there will be no expense to you.

Yours very truly,

FOSTER AND KLEISER COMPANY

By E. D. Young

Manager, Lease Department

EDY:V

[CHK]

SAN FRANCISCO BRANCH

[On back]:

November 9, 1923.

Foster and Kleiser Co.,
Eddy St. at Pierce,
San Francisco, Calif.

ATTENTION; E. D. YOUNG, Mgr.

Lease Department.

Gentlemen:

In reply to your letter of November 1st in regard to Federal Tire Bulletin at the North west corner of School and Mission Streets, will say if you will remove it for us and take care of it we will pick it up at a more convenient time.

Yours very truly,

SPECIAL SITE SIGN CO.,

BY

GENERAL MANAGER.

CHK-MSM

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 184-a Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: Our bulletin was taken down. As I recall, we picked the bulletin up in Foster & Kleiser's yard. I never remember having any conversation with Mr. Young in which I told him we would take this down. I don't recall ever seeing him. I never talked to him on the telephone and never talked to him about anything that I know of. I don't recall talking with anybody about taking down this bulletin.

Refreshing my recollection from this memorandum, the term of our lease was from April, 1918 to April, 1923. I was just on there year to year after that. I don't know what rental I was paying. We leased the property from a man by the name of Coppa who said he was the owner. He was not in possession. He ran a resort across the street from this property. I never heard from anyone with reference to this property except Foster & Kleiser. Our bulletin was removed in 1923.

BY MR. CLARK:

I don't believe that property ever belonged to the Spring Valley Company.

Two Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 184-B and 184-C in evidence, respectively. Said Plaintiff's Exhibit 184-B in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 184-B.]

[Crest]

Foster and Kleiser
COMPANY

Colme w/8

San Mateo Co.

Block 27, Union Park Subdivision,

LOCATION ~~St. Highway S Orange Ave.~~ (except NW
Cor. Mission & School, 100x100)

OWNER Abe Schoenfeld,

ADDRESS ~~719 Market St. 206 16th Ave. 218~~
~~Embarcadero~~ or 712 Bryant

AGENT

NUMBER 1540

CLASSIFICATION Highway

PHONE

Date	Offered	By	Remarks
			5 yrs from 4-1-20 at 240.00 yr. Rec. 40.00 from Del Sarto for rental agricultural priv. from 11/25/21 to 11/25/22.
			Rec. \$35.00 from Del Sarto for rental agricultural priv. from 11/25/23 to 11/25/24

(Testimony of Charles H. King)

- 4/13/24 LK Delivered Check OK.
- 12/18/24 EHD Saw Mr. Edwards who wants agricultural rights left out of next lease.
- 1/20/25 ARJ Mr. E. wants to lease again b t told him we could do so only at a great reduction in rental. Ofd \$7.50 per mo. without agricultur permit & \$12.00 with. Thinks worth more than previous yrs.
- 2/20/25 ARJ Ofd 75.00 per sign min \$150.00, wants 3 bds guaranteed.
- 2/24/25 ARJ Mr. E. says our quotation will be alright but wants to see others interested. 3/15
- 3/27/25 ARJ Mr. E. has gone on vacation, back 4/1. See at either 218 Embarc. or 712 Bryant. 4/15
- 4/ 1/25 ARJ See at either 218 Embarcadero or 712 Bryant.
- 4/20/25 ARJ Saw other bro. of Edwards and have had offer of \$225 for 1 sign from

[Stamped on face of card]:

TRANSFER FILE
SEE NEW CARD MADE UP.

(Testimony of Charles H. King)

[On back]:

Date	Amt. Offered	By	Remarks
			private concern. Does not want to take but will if we cannot come thru.
4/27/25		ARJ	Will only continue @ old rate.
4/30/25		ARJ	Mr. E's Bro. says to be down at 11 o'clock for final discussion.
5/ 2/25		ARJ	Is going to get customer for sub. on school St. offered \$300 per yr. for that
7/24/25		ARJ	Hasn't found man to take another sign will see me in few days.
8/11/25		ARJ	Mail leases for this to Mr. D. H. Edwards c/o Richelieu Hotel, S. F. @ \$240.00 yr.
8/31/25		ARJ	Said he signed for only 1 yr but if I bring back will amke it 10
9/ 2/25		ARJ	Left new leases for E. to sign
9/ 6/25		ARJ	Mr. E. says let ride for few days sister very excitable

(Testimony of Charles H. King)

- | | | |
|----------|-----|---|
| 9/21/25 | ARJ | Mr. E. says will get me lease last of wk |
| 10/ 3/25 | ARJ | 5 yrs from 4/1/25 @ \$240.00 yr. 12/A Form-B from D.H. & M.A. Edwards |
| 11/24/25 | HSP | Edwards reports the 60' upon which we have board will very soon be blt perdict T. D. inside 30 da |
| 1/ 6/26 | KGH | Edwards says not going to build for time being, just let ride until further notice |

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 184-B Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 184-C in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 184-C.]

[Crest]

Foster and Kleiser
COMPANY

CITY S. F. CLASS Hwy RM LEASE NO. 1540

LOC. S. F.-L. A. Hwy. RS Mission & School
NW 100x100

LEGAL Block 27 Union Park Sub. Div.

LOC.

LEGAL

OWNER ~~D. H. & M. A. Edwards Co.~~
D. H. & M. A. Edwards Co.ADDRESS ~~Hotel Dorchester, 1492 Sutter St.~~
238 Market St., S. F.
~~Union League Club, 555 Post St., S. F.~~
~~1040 Van Ness Ave. S. F.~~

Am't

Date Offered By

Contact Data

(Old Card in Transfer File)

10/ 3/25	ARJ	5 yrs. from 4/1/25 @ \$240.00 yr. - 12/A Form "B" from D. H. & M. A. Edwards.
1/ 6/26	KGH	Edwards says not going to build for time being, just let ride until further notice.

(Testimony of Charles H. King)

- 8/24/28 KGH Cultivation call; ownership OK.
- 3/10/30 RM Have not seen Edwards in many calls. Left renewal and will follow closely.
- *3/11/30 RM 5 yrs. from 4/1/30 @ \$240.00 yr. - 12/A Form A-1 from D. H. & M. A. Edwards by Henry Edwards, Pres. & Hannah Ginsberg, Secty. (Non-Community) 2C
- *6/25/30 RM 5 yrs. from 4/1/30 @ \$240.00 yr. - 12/A Form A-1 from D. H. & M. A. Edwards Co., by Henry Edwards, Pres. & Hannah Ginsberg, Sect'y. (Non-Community) 2C
- *12/19/31 JFW 10 Yrs. from 1/1/32 @ \$240.00 yr. - 12/A Form A1 from D. H. & M. A. Edwards Co. Henry Edwards, Atty. in fact and Hannah Ginsberg, Secty. (Non-community)-3C

*These entries typewritten in red.

12/31/31 EG Recorded 12/22/31.

6/23/32 JFW Bring up. 11/1/32

[Stamped on face of card]:

CANCELLED
JAN 14 1933

(Testimony of Charles H. King)

Date	Am't Offered	By	Contact Data
8/23/32		LWC	Reduce or cancel. 11/1/32.
9/21/32		JFW	Edwards will discuss reduction to \$60.00 with others interested
11/ 8/32		JFW	Edwards to come in office and settle within a few days.
11/29/32		LWC	Letter to Edwards Co. adv. cancelling as of 1/1/33 date to which rental paid. Up 1/1/33
12/20/32		RCB	Ord. iss. T. D. 1-17x60 City Ill. Plt. Imp. L2BA.
3/22/33		JJF	Release of recordation.

[Stamped on back of card]:

CANCELLED
JAN 14 1933

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 184-C. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: We had a location just outside of San Francisco on the San Francisco-Los Angeles Highway, one-tenth mile south of Belli's store, Colma.

A lease to Special Site Sign Company dated April 8, 1923 was thereupon received in evidence and marked Plaintiff's Exhibit 185-A in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 185-A.]

Federal.

Oakland, Cal., April 8, 193

In Consideration of 25.00 receipt hereby acknowledged (\$.....) Dollars per year, payable in advance installments....., the undersigned, Lessor, hereby leases to SPECIAL SITE SIGN CO., of 308 Twelfth Street, Oakland, California, Lessee, its successors or assigns, the premises (with the privilege of access through and upon same) known and described as follows, to-wit: SE Corner my property between Millets and Colma west side San Jose Hiway for the exclusive erection and maintenance of advertising signboards thereon. Rent to commence when signboards are erected on said property, and on like terms for the five (5) succeeding years, unless terminated by the Lessor as hereinafter provided, or terminated by the Lessee giving ten (10) days' written notice of termination of this Lease, and removing said signboards from said property.

It is Expressly Agreed, that the Lessor may order the advertising signboards removed at any time by giving the Lessee thirty (30) days' notice in writing, in case the Lessor sells the premises, or improves same by erecting a building on said premises, or leases said premises for other than advertising purposes, and upon consummation of said sale, or improvement thereon, evidenced by passing of Deed or Building Permit, respectively, the Lessor shall refund to the Lessee the rent paid in advance, pro rata,

(Testimony of Charles H. King)

from the time of the removal of its boards. In case the boards should be removed pursuant to any such notice, and the proposed sale or improvement should not be made forthwith, then the Lessee shall again have the exclusive right to replace its boards on said premises, and this Lease shall continue in force for the term above mentioned.

Should the View of the boards become in any way obstructed, the Lessee may terminate this Lease and the Lessor shall refund to the Lessee the rent paid in advance, pro rata, for the unexpired term above mentioned.

All Boards placed on the premises under this Lease shall remain the property of the Lessee, and may be removed by them at any time.

STAN ORTIZ

Stan Ortiz

Lessor.

Address Colma, Cal

SPECIAL SITE SIGN CO., Lessee,

By Chas Batten

[Written in ink across face]:

Sign Down 4/8/26

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 185-A Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: We never had any trouble with Ortiz over this lease at all.

BY THE COURT:

I don't understand how it happened that Foster & Kleiser had a lease as of April 1, 1920 and we got one as of April 11, 1923. I never knew they had any lease and as far as I recall, Ortiz never knew anything about it. He never mentioned it to me. I never asked to see the lease. There was never any occasion to ask.

Two Foster & Kleiser Company's office record cards covering the property referred to by the witness were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 185-B and 185-C in evidence respectively. Said Plaintiff's Exhibit 185-B in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 185-B.]

[Crest]

Foster and Kleiser
COMPANY

LOCATION ~~50' WL Mission Road N. Milletts, Colma~~
50x11

OWNER Stanboes Ortiz

ADDRESS Colma, Calif

AGENT

NUMBER 1195

CLASSIFICATION surface

PHONE

	Amt.		
Date	Offered	By	Remarks
			5 yrs from 4/11/20 @ \$10.00 per yr. Ann.
4/18/24		RLC	Ownership OK. Send check.

(Testimony of Charles H. King)

- 12/16/24 ARJ Mr. O's bro. died & is going to sell. Says will be sold before expiration. 1/15/25
- 1/19/25 ARJ Mr. O. says man who figured to buy has not come thru as yet. Says will expect 25.00 per yr. if he still has property @ expiration. Says all targets are paying 25.00. 2/15
- 2/18/25 ARJ Will probably be sold for nursery soon. 3/15
- 3/17/25 ARJ Has not sold as yet. Says we will have to pay \$25.00. 4/1

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 185-B. Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 185-C in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 185-C.]

[Crest]

Foster and Kleiser
COMPANY

LOCATION S. F.-L. A. Hwy RS 1/10 Mi. S Belli's
Store, (Hwy & A NW)

LEGAL

OWNER Stanboes Ortiz

OR

TENANT

ADDRESS Colma, Calif.

AGENT

LEASE No. 1195

CITY COLMA

CLASS. Sur

PHONE

		Amt.	
Date	Offered	By	Remarks
			Old card in transfer file.
4/11/25		ARJ	10 yrs. from 4/11/25 @ \$25.00 yr. Ann. Form A-1, from Stan- boes Ortiz.
5/13/26		M	Appointment with "O" to discuss competitors board.
			5/25/26 up at once

(Testimony of Charles H. King)

HSP Note: Unsecured card made up
and being followed.

9/17/26 WJH CANCEL NOW SEC. UNDER
#8094. WJH

[Stamped on face of card]: CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 185-C Filed 12/26 1934 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

Witness continuing: We built a 10x25 painted bulletin, highway type, on the property. It was unilluminated but it was suited for an illuminated de luxe bulletin. This was a head-on location at a curve in the road. There were no structures on the property when we built and I did not know anything about any other advertising leases to other persons. Our board was taken down. I don't know who did it and I can't remember the date. Refreshing my recollection from the notation on the lease, I discovered its loss on April 8, 1926. We had built it in 1923.

BY MR. CLARK:

I did not write this memorandum on the lease, Plaintiff's Exhibit 185-A, "Sign Down 4-8-26". The bookkeeper wrote it.

BY MR. GLENSOR:

I have no independent recollection of when that sign was lost. Whenever I lost a location I either made a notation of it myself on the lease or I had the bookkeeper make the note. That would be Mrs. Montgomery's handwriting.

(Testimony of Charles H. King)

MR. CLARK: I move to strike out all the witness' testimony with respect to the date on which the lease was lost, he having derived that testimony from a memorandum which he now admits he did not write.

THE COURT: Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 164.

Witness continuing: We had a location at 38th and Hopkins Streets, Oakland. We leased from a lady by the name of Provensal.

MR. CLARK: That is another location which was first specified in the amended bill of particulars of December 3, 1934.

Witness continuing: I wasn't able to locate our lease. You have found rental checks at five dollars, apparently per annum, from June 5, 1925, paying rent on this property until June 5, 1928. That recalls to my mind the dates and terms of the lease. This site was suitable for two illuminated poster panels. We had built a 4 x 6 painted bulletin on it. Poster panels are not sold individually and we hold these leases until such time as we can make up a showing. That is what we were doing with this site.

Two letters from Foster & Kleiser Company to Special Site Sign Company dated respectively May 1, 1928 and May 2, 1928 were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 186-B and 186-C in evidence, respectively. Said Plaintiff's Exhibit 186-B in evidence is in words and figures as follows, to wit:

1516

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 186-B.]

[Letterhead]:

[Crest]

Foster and Kleiser
— COMPANY —
ADVERTISING

22nd and Market Streets
Telephone Lakeside 8760

Oakland, Cal.

May 1st, 1928

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

Gentlemen:

E 38th St. & Hopkins

RE: ~~3225~~ Louise Street—Oakland

This is to advise that we have an exclusive advertising lease covering the above described property. Consequently we are asking you to remove your signs and structures from same within five days from date.

We also understand that the owner had given you notice to vacate a week or ten days ago. Therefore, we request your immediate attention.

Yours very truly,

FOSTER AND KLEISER COMPANY

Grant M Smith N

Grant M. Smith

WAH:NEB

Oakland Branch Manager

[In pencil]: Sign Removed May 3-1928

OAKLAND BRANCH

(Testimony of Charles H. King)

[Envelope]:

[Crest]

Foster and Kleiser
COMPANY

22nd and Market Street
Oakland California

[Cancelled postage stamps.]

REGISTERED No. 65579
RETURN RECEIPT REQUESTED

Special Site Sign Co.,
3225 Louise Street,
Oakland, California.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 186-B Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 186-C in evidence is in words
and figures as follows, to wit:

1518

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 186-C.]

[Letterhead]:

[Crest]

Foster & Kleiser
— COMPANY —

22nd and Market Streets
Telephone Lakeside 8760

Oakland, Cal.

May 2nd, 1928

Special Site Sign Co.,
3225 Louise Street,
Oakland, California

Gentlemen:

RE: Hopkins & Adell Court SE 131x250'

We wrote you yesterday, May 1st, requesting the removal of your structures from a location which was incorrectly described. This letter is to correct the description which should read "Hopinks & Adell Court SE

1

131x250', adjoining 2003 Hopkins.

(Testimony of Charles H. King)

We request that you remove your signs and structures within five days from May 1st, as we have an exclusive advertising lease on this property.

Yours very truly,

FOSTER AND KLEISER COMPANY

Grant M Smith

Grant M. Smith

WAH:NEB

Oakland Branch Manager

OAKLAND BRANCH

No. 5673-C Special Site vs. Foster & Kleiser Plf
Exhibit No. 186-C. Filed 12/26 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Witness continuing: We vacated when we received that letter. Our sign was on the Provensal property, the southeast corner of Hopkins and 38th. We brought our sign into the shop. I didn't ever see a Foster & Kleiser lease. I didn't have any information that they had a lease other than the statements of Mr. Smith contained in these letters. We removed our structures because he claimed to have a lease.

Q Did you have any idea what might happen to your structures if you did not remove them?

A Yes, sir.

(Testimony of Charles H. King)

Q What was it?

A Well, I thought they might disappear.

MR. CLARK: I move to strike out what the witness thought about this matter, if the court please, on the ground it is incompetent.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 165.

Q BY MR. GLENSOR: What was your value of the Provensal lease?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further ground that there is no foundation laid in that the plaintiff voluntarily removed its structures.

THE COURT: Overruled.

(Testimony of Charles H. King)

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 166.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$1,545.

Witness continuing: That location is on a main arterial, a heavily travelled street; it is a key location.

We were servicing a sign for the American Toll Bridge Company at Galt that was leased from a lady by the name of Myrtle May. A sign-board bearing Oakland-San Francisco Railway was Toll Bridge copy and that was the sign were maintaining there. We built it for the Toll Bridge Company. At the time we built it there was no Sego Milk board. It was put there a year or possibly two years after we built our sign. We maintained all the structures for the American Toll Bridge for a while. We finally lost the account. That Sego Milk board was a Foster & Kleiser board. I know that because there was no one advertising Sego Milk but Foster & Kleiser. I am familiar with their type of structure. We had a sign on Grove Street west line 90 feet south of 27th, on the property of William G. Wilson. 2611 Grove Street is between 26th and 27th Streets on the west side of Grove which is one of the main arterials between Oakland and

(Testimony of Charles H. King)

Berkeley. Our sign was obstructed by a six-sheet target of Foster & Kleiser.

You have shown me a card mounted with two pictures. The lower picture shows the Special Site sign. They are both the same sign. It is a twenty-four sheet. The upper picture shows our sign obstructed by a smaller card. The smaller sign is a six-sheet poster bearing the imprint of Foster & Kleiser. It was built after our twenty-four sheet panel was put up.

(The photographs were thereupon offered and received in evidence and marked Plaintiff's Exhibit 188-A in evidence. A true and correct reproduction of said Plaintiff's Exhibit 188-A in evidence is as follows:

(Photos.)

Two Foster & Kleiser Company's office record cards heretofore marked Exhibits 11-B and 11-C for Identification were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibits 188-B and 188-C in evidence respectively. Said Plaintiff's Exhibit 188-B in evidence is in words and figures as follows, to-wit:

William G. Wilson Property

Showing Location with F & A
Construction



2611 Grove St W/S Bet. 26th & 27th Sts.
OAKLAND

Showing location without construction,



2611 Grove St. W/S Bet 26th - 27th Sts
OAKLAND

No. 5673C. Special Site Sign vs Foster Kleiser
Pltfs. Ex. 188A. FILED 12/26/34 R.S. Zimmerman, Clerk.
By. Cross. Dep. Clerk.



(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 188-B.]

[Crest]

Foster and Kleiser
COMPANY

CCC 2

CITY Oakland CLASS. SUR LEASE NO.

LOC. Grove WL 90' S. 27th 45'
 LEGAL Lots 33 & 34 Map #2 Witcher Tract
 LOC.
 LEGAL
 OWNER WILSON
 ADDRESS 16 Geary St., S. F.

Date	Am't Offered	By	Contact Data
11-18-27		WAH	Wilson leasing for Mulkey Mat-tress target now.
11-24-27	24.-	WAH	Not interested at present. Keep close contact. Spec. Site "hot" after this.
12-10-27	24.-	WAH	Wants call after Jan. 1, 1928. Promises to deal with F & K only. Believes we can have then. Start-ing to wreck old frame work which now obstructs space which we pro-pose to use. Up 1-1-28
1-14-28	24.-	WAH	Requests call in about 30-60 days 2-15-28

(Testimony of Charles H. King)

3- 6-28 24.- WH More money would secure this.
Good progress. Up 3-20-28

4-12-28 24.- WAH Mulkey - Mattress lease expired
5/1. Ready to do business but
wants much more money. Going
to get offer from Spec. Site &
Coast.

4-19-28 48.- WAH Wants to wait until 5-1-28 before
leasing.

4-26-28 48.- WAH Says he has much better offer
from another Co. & intends leas-
ing to them if they will pay 6 mos.
in advance.

4-28-28 48.00 WAH Says we have made our offer. It
must stand. Will not "bid" one
Co. against another. Special Site
are willing to pay considerably
more.

5- 1-28 48.00^vWAH Leased Special Site-five year lease.

[Written on face]: Transferred

[Stamped on face]: CANCELLED EXTRA TIGHT

No. 5673-C Special Site vs. Foster & Kleiser Plf.
Exhibit No. 11-C for ident Filed 12/11 1934. R. S.
Zimmerman, Clerk By Cross Deputy Clerk

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 188-B Filed 12/26 1934 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk

Said Plaintiff's Exhibit 188-C in evidence is in words
and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 188-C.]

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland
CLASS. SUR
LEASE NO.

LOC. Grove WL 90 S 27th 45'
LEGAL Lots 33-34 Map #2, Witcher Tract
LOC.
LEGAL

OWNER W. G. WILSON
ADDRESS 16 Geary St. S. F.

		B4	2TA 1TA
Am't			
Date	Offered	By	
			Under lease to Special Site 5 yrs from 4-28-28 @ S/A
5- 1-28	48.00	WAH	Leased to Special Site today. Refuses to tell rental considera- tion.
2- 7-29		WAH	King has never built.
7- 2-29		WAH	Wilson out of town for 2 weeks. Up 7-20-29

(Testimony of Charles H. King)

[On back]:

Date	Am't Offered	By	Contact Data
11-12-30		WAH	Conditions unchanged. Up 1-25-31
1-27-31		WAH	Panel still here; lease in full force. Up 4-10-31
4-22-31		RGB	Same owner; same conditions. Up 7-7-31
7-20-31		WAH	O. K. to pass contact. Up 10-5-31
12- 7-31		RNC	S.S.S. still operating here. Up 3-25-32
3- 1-32		RNC	Rental coming in O K on this. Up 5-14-32
5-25-32		RNC	Panel still here. Same owner. Up 11-12-32
12- 1-32		WAH	Check at later date
6-18-34		WAH	Situation unchanged. Check at later date. Up 12-10-34

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 11-B for ident Filed 12/11 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 188-C Filed 12/26 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: The Wilson referred to on the card was the owner of the property and the Milkey Mattress sign belonged to us.

Q How long did that target sign that is blocking out your 24-sheet remain up?

A Well, I don't recall the duration.

Q Well, is it up now?

A No, sir.

Q It was removed?

A It was removed after the James decree.

MR. CLARK: Now, if the court please, we especially assign that as deliberate and intentional misconduct on the part of the plaintiff himself, and also on the part of counsel for the plaintiff, and we ask that the jury be directed to disregard it.

THE COURT: Yes, the jury is directed to disregard any reference to the James decree.

Mr. Glensor thereupon offered, and there was received in evidence, 30 office record cards of Foster and Kleiser Company which were marked collectively as Plaintiff's Exhibit 189 in evidence. One of said cards was then, by agreement of counsel, withdrawn.

(Witness continuing): These cards (referring to the cards constituting Plaintiff's Exhibit 189 in evidence), all pertain to locations upon which Special Site Sign Company at one time had leases, and which had been lost by Special Site Sign Company.

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 189.]

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS SUR LEASE NO.

LOC. Foothill & 40th SE 52x70

LEGAL Block C, Por lots 7 & 8—Blvd. Villa Tract
LOC.

LEGAL

OWNER JOS. HOLDENER

ADDRESS 1922 - 38th Ave. Oakland, Calif.

(Trin 3366—Leonard F. Meilheim Co.
6225 E 14th St. Oakland)

Am't

Date Offered By Contact Data ~~B4~~ B3 4TAUnder lease to Special Site Sign
Co. 10 yrs from 7-1-27 @ \$25.00
yr Ann.7-25-27 WAH Mrs. H. offered above information.
Said she was sorry we had not
called sooner as she is now leasing
E 14th & 67th NW to F & K. Can-
not tell whether Illum. or Unill.
as yet.

(Testimony of Charles H. King)

- 10- 3-28 WAH Mrs. Holdene very friendly. Leases location to F & K too. Advises S.S.S. pay rent regularly. Have 10 yr lease. Well satisfied.
Up 2-1-29
- 2- 6-29 WAH Mrs. Holdene advises S.S.S. paying O.K. No reason to be at all dissatisfied. Up 7-20-29
- 7-20-29 WAH OK to pass. Up 11-5-29
- 11- 2-29 JHB 2 panels of Unill. B.P. on property. Mrs. Holdener advises rental coming in O. K. Up 1-10-30
- 4-19-30 JHB Mrs. H. says rental coming in O. K. Up 10-1-30
- 11-26-30 JHB Rental O.K. Up 4-1-31
- 4- 9-31 WAH Present situation here unchanged. Up 10-1-31
- 10-10-31 WAH O. K. to pass contact. Up 8-1-32
- 9- 1-32 WAH Check at later date.
- 6-20-33 WAH Rumored that Milheim Oil Co to build station here. Up 9-1-33
- 9- 8-33 13 WAH Structures removed to make way for erection of gas station (over)
816-106-#1

(Testimony of Charles H. King)

[On back]:

Date	Am't Offered	By	Contact Data
2-23-34	WAH		by Milheim Oil Company. Check at later date. Up 2-20-34 Gas station deal fallen through. Contact at later date.

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. SUR LEASE NO. 3067

LOC. San Pablo WL 146' N 55th St 80'

LEGAL Lot 4 & 5, Block 1, Behlow Tract

LOC.

LEGAL

OWNER F. R. DRINKHOUSE

ADDRESS 220 Alma Street, San Francisco

Date	Am't Offered	By	Contact Data
8-12-27	WAH		10 yrs from 8-12-27 @ 24.00 yr S/A Form A-1 from F. R. Drink- house (non-community.)

(Testimony of Charles H. King)

- 12- 4-28 WAH S.S.S. building small paint target here.
- 12- 5-28 WAH Contacted Drinkhouse who claims to know nothing about this. Says he and partner, Jacob Mintz, could not get along, so they dissolved and divided this 80' frontage, Mintz taking the So. 40' upon which the "Spec. Site" are now bldg. Advises Mintz can be seen at cor. San Pablo and 27th Sts.
- 12- 6-28 WAH Cannot locate Mintz as per Drinkhouse's instructions.
- 12- 6-28 WAH Found Mrs. Mintz at 2631 San Pablo Ave. She advises they signed Special Site lease @ \$25.00 yr. last Saturday. Claims they did not know Drinkhouse had leased to us. See husband Saturday, 12:30 P.M.
- 12- 8-28 WAH Long talk with Mintz and wife in effort to make them see our position. They claim Spec. Site should stay on prop. as nothing was known about our former lease signed by Drinkhouse.
- 12-10-28 HHW Letter to Spl. Site advising to remove and advising of our lease.
- 12-13-28 HHW Reply from Spl. Site advising their lease good (explanation in letter)

(Testimony of Charles H. King)

12-26-28 HHW Matter referred to Mr. Hughes who wrote Mr. Thompson, S.F. Office

 HHW Legal opinion received from Mr. Williams stating Spl. Site Co. lease is OK.

[On back]:

Am't

Date	Offered	By	Contact	Data
1-18-29	HHW	Note to Mr. Hughes who will again take up with Mr. Thompson		
1-30-29	HHW	Awaiting further advice from Mr. Thompson, Gen. Office, follow Mr. Hughes		Up 2-20-29
2-20-29	HHW	No further word from Mr. Thompson.		Up 3-20-29
3-20-29	HHW	Bring up		Up 6-20-29
7- 2-29	WAH	G.A.H. advises to pass contact for present.		

(Testimony of Charles H. King)

- 8- 9-29 WAH Letter to Drinkhouse advising we wish to allow his two Up 10-1-29
rental checks now due on lease #2157 & 2156 amounting to \$32.00 to apply on \$34.00 rental adjustment due on this. Up 8-20-29
- 8-20-29 WAH Letter from Drinkhouse refusing to agree to our suggestion contained in our letter of 8-12-29
- 9- 6-29 WAH Checks covering 2 other locations and another letter sent to Drinkhouse today. Up 9-18-29
- 10-12-29 WAH Another letter enclosing refund bill; see lease env. Up 11-18-29
- 10-12-29 CANCEL O.K. WAH WAH
Up 11-15-29 H

[Stamped on face of card]:

CANCELLED

STRUCTURES REMOVED—CHECK FOR
REBUILD OR CANCELLATIONS

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. SUR LEASE NO.

 LOC. San Pablo WL 146 N 55th 40
 LEGAL Lot 4 Block 1 Behlow Tract
 LOC.
 LEGAL

OWNER JACOB MINTZ
SANTI CASAVESHIAADDRESS ~~2637~~ San Pablo Ave.

Am't

Date	Offered	By	Contact Data	B 4 B3	ITA
------	---------	----	--------------	-------------------	-----

Formerly under lease No. 3067—
 10 Yrs from 8-12-27 at \$24.00 Yr.
 S/A Form A1 from F. R. Drink-
 house, (Non-community)

2-	3-30	WAH	Now under lease to S.S.S. Co.— 5 Yrs. from 12/2/28 at \$25.00 Yr. Ann From Jacob Mintz.—1 Unill. B.P. 12x25	Up 4-20-30	
----	------	-----	--	------------	--

(Testimony of Charles H. King)

[On back]:

Date	Am't Offered	By	Contact Data
12-19-32	NEB	Thos Bros report sale of property from Rose Mintz to Santi Casavesshia	
12-27-32	WAH	Property to be improved soon. Up 3-1-33	
2-28-33	WAH	Special Site panel removed. Owner contemplates erection of building here shortly. Up 6-1-33 Up 9-15-33 Up 11-29-33	
12- 8-33	WAH	Panel would have only short approach. Undesirable. Up 5-15-34	
5-21-34	WAH	Property under present conditions undesirable. Up 10-1-34	
10- 8-34	RNC	Flat panel only could be erected here. See later. Up 1-1-35	

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS HWY LEASE NO.

LOC. Foothill Blvd & Ivy SW

LEGAL

LOC.

LEGAL

OWNER MR. SHEPARD

ADDRESS P.G & E Office

Am't					
Date	Offered	By	Contact Data	B2	4TA
			Under lease to Special Site Sign Co. yr to yr @ \$25.--		
7-29-24	15-	WAH	Mr. Shepard will let us know.		
10- 1-24		WAH	Do not want location; tree kills view.		
6- 9-26		LG	Renewed lease with King.		
12- 1-26		LG	No progress. Rented to S.S.S.Co.		
5- 3-28		LG	Have good lease.	Up 11-20-29	
12-12-29		RW	Location very poor.	Up 3-10-30	
4-14-30		RW	Not suitable for paint	Up 10-10-30	
10-14-30		RW	Situation same. Tree obstructs view.	Up 2-10-31	

(Testimony of Charles H. King)

2-21-31	RW	Undesirable.	Up 9-20-31
11/ 3/31	RW	Trees removed. Still under lease to S.S.S.Co.	Up 2-25-32
4-15-32	RW	Structure still on property.	Up 8-20-32
9- 1-32	WAH	Check at later date.	
6-30-33	WAH	Structures removed. CANCEL	WAH

[Stamped on face of card]:

CANCELLED

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS SUR LEASE NO.
 LOC. E 14th NL 84' E 54th 36'
 LEGAL
 LOC.
 LEGAL

OWNER V. N. SMITH
 ADDRESS 5034 E 14th Street, Oakland

	Am't			
Date	Offered	By	Contact Data B4	3TA

Under lease to Special Site S.Co. 5
 yrs from 3-1-28 @ \$60.00 yr
 12/A

(Testimony of Charles H. King)

- 4-28-28 JHB Originally rented to Oakland Display Co. who after holding a month or so requested of Smith permission to turn over to S.S.S.Co. Friendly contact with Smith from whom we lease E 14th & 54th NE —E 14th & 66th.
- 4-29-29 WAH H.H.W. & myself—Long contact with Smith who advises no changes here. Rental being paid as per agreement and everyone concerned is satisfied. Up 7-20-29
- 7-26-29 JHB Smith says no change. Above term of lease O.K. Rental O.K.
Up 10-15-29
- 12-15-29 JHB No change in above information.
Up 12-28-29
- 1- 2-30 JHB Rental being paid O.K. Up 3-15-30
- 3-28-30 JHB Smith's tenant endeavoring to have board removed as it blocks his vegetable market Up 6-15-30
- 6-16-30 JHB Rent is O.K. New tenant in corner. Does not object to board.
Up 9-10-30
- 9-16-30 JHB Rental O.K. No change in this situation. Up 11-16-30
- 11-18-30 JHB Smith advises rental O.K.
Up 1-18-31
- 2-18-31 12 JHB Rental O.K. Up 5-1-31

[Stamped on face of card]:

CANCELLED

(Testimony of Charles H. King)

[On back]:

Am't			
Date	Offered	By	Contact Data
4-16-31	RNC		Smith advises everything satisfactory here. Up 6-20-31
7-29-31	WAH		O. K. to pass contact. Up 2-25-32
2-29-32	RNC		V. N. Smith has erected building on entire space. Cancel (W.A.H.) WAH

[Stamped on face of card]:

CANCELLED

Removed from Sheet 15 on May 30-1931

[Crest]

Foster and Kleiser
Company

CITY Oakland & Berkeley

CLASS. SUR

LEASE NO. 2947

LOC. San Pablo WL 40' N. 67th 170'

LEGAL Por. Lot 1 & 2 Oakland Lot 60 por. 1 & 59
Berkeley—Tract Villa Homestead Ass'n

LOC.

LEGAL

OWNER A. F. WILSON

ADDRESS c/o Hammond & Dean, 464-19th St., Oakland

(Testimony of Charles H. King)

Am't		
Date Offered	By	Contact Data
4-20-27	EAD	10 yrs. from 5-1-27 @ \$75.00 yr. S/A Form A-1 from W. Hammond (non-community)
11- 4-27	RB	Property reported sold by Wm. Hammond, Hammond & Dean.
11- 8-27	ED	Property sold to Mrs. Wm. O'Neill
12- 1-27	ED	Mr. O'Neill said to call.
12-19-27	ED	Going to build in 30 days. Up 1-15-28
1- 9-28	ED	Deal on for bldg. Up 2-29-28
Feb - - 1928		"Class D"—No Lease—Contact At Least Annually
3-10-28	ED	Wants \$100.00 yr.
3-20-28	HHW	Cancel and make unsecured. STRUCTURES REMOVED — CHECK FOR REBUILD OR CANCELLATION Up 5-20-28 [HHW EMS]

[Stamped on face of card]:

CANCELLED

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland and Berkeley CLASS SUR LEASE NO.

LOC. San Pablo WL 40' N. 67th 170'

LEGAL Por. L 1 & 2 Oakland Lot 60 por. 1 & 59
Berkeley Villa Homestead Assn. Tract

LOC.

LEGAL

OWNER ~~MRS. WM. O'NEILL~~
AMERICAN TRUST COMPANY,

ADDRESS ~~1082 57th St.~~
First Berkeley Branch, Berkeley, Calif.

Date	Am't	By	Contact Data	B ₃	B ₄	B ₃	B ₄
				B3			4TA
3-24-28		RB	Formerly under lease No. 2947— 10 yrs. from 5-1-27 @ \$75.00 yr. S/A				Up 4-15-28
5- 5-28	75.-	JHB	Mrs. O'Neill says to see Bill Ham- mond. Anything he does is O.K. with her.				
5-10-28		ED	Bill Hammond will see Mrs. O'Neil.				Up 5-15-28

(Testimony of Charles H. King)

5-16-28	ED	Hammond wants \$150.- yr. Up 6-15-28
6-14-18	ED	Wants \$100.00 a year. Up 7-15-28
7-25-28	ED	Wants \$100.00 a year. Up 8-30-28
9- 7-28	ED	“ “ “ Up 10-5-28
10- 8-28	ED	“ Up 12-15-28
12-18-28	ED	“ Up 3-1-29
3- 4-29	ED	Wants \$100.00 a year. Up 6-1-29
6- 3-29	ED	Mrs. O'Neill wants \$100.00 a yr. Up 6-30-29
7-22-29	WAH	Do not want at present. Up 11-20-29
12- 1-29	WAH	O.K. Pass contact. Up 5-10-30
12-21-29	RGB	Secured by Spec. Site S. Co. all of lots 1 & 2 Oakland and Lots 59 & 60 Berkeley in Block 1514 Villa Homestead Tract, including 250' for a period of 10 yrs. from 12-21-29 at \$65.00 Yr. from Mrs. W. O'Neill, owner. Up 2-15-30

(Testimony of Charles H. King)

[On back]:

Date	Am't Offered	By	Contact Data
1-31-30		RGB	12½x47 Unill City Bull. adv. Pet Milk just completed. Up 6-15-30
6-16-30		RGB	Still under lease to S.S.S. Co.— same owner. Up 1-10-31
1-17-31		RGB	Same owner; no change. Up 6-15-31
6-20-31		WAH	Same situation. Up 11-1-31
11-20-31		WAH	O. K. to pass contact Up 5-1-32
5-19-32		WAH	Check at later date.
2- 8-33		EAD	Special Site Sign Co have removed structure. Check at later date.
2-28-33		EAD	Special Site Sign have erected two Unillum panels of posting. Up 6-1-33
6-20-33		WAH	Check at later date.
12-31-33		WAH	S. S. S. have removed panels. Check later. Up 3-1-34
3- 9-34		WAH	Check at later date

1546

(Testimony of Charles H. King)

% \$

[Crest]

Foster and Kleiser
COMPANY

EL 54th to 55th ~~200x115x112~~ 200.25x115x112

LOCATION San Pablo & 5th N. E. ~~200x111x100'~~

LEGAL ~~Blk 1105~~ Lots 1-2-3-4-5 Gaskill Tract A-1185

OWNER J. McDONALD EARL A. McDONALD
YEE SHEW LUNG

ADDRESS ~~5728~~ San Pablo Ave., Oakland, 272-7th St.

AGENT

LEASE NO. 2230

CITY Oakland

CLASSIFICATION SUR & 6 SH

PHONE

Amt.				
Date	Offered	By	Remarks	
6- 1-25		ED	Property sold	Up 7-1-25
6-30-25		Ed	Deal is not closed	Up 8-1-25
8- 6-25		ED	Said to call	Up 8-30-25
8-28-25		ED	Property sold.	Up 9-20-25
9-21-25		ED	Said to call.	Up 10-15-25
10-13-25		ED	"	Up 10-20-25
10-19-25		ED	Deal on for gas station.	Up 11-30-25
12- 3-25		ED	Said to call.	Up 12-20-25

(Testimony of Charles H. King)

12-21-25 ED Deal on for gas station.
Up 2-10-26

1-16-26 ED 10 yrs. from 1-18-26 @ \$120.00
yr. 12/A Form A-1 from Earl A.
MacDonald

12-14-26 EAD 10 yrs. from 12-1-26 @ \$240.00
yr. 12/A Form A-1 from Yee
Shew Lung

10-28-30 NEB Thos Bros report property sold to
Chin Hong.

11- 1-30 WAH Property sold. Endeavoring to
contact new owner. Cancel check
paying for 11-1-30 to 12-1-30.
HOLD RENTAL.

11-26-30 WAH Contacted Yee Shew Lung - C. L.
Mow - May S. Chan - all related
and have separately and at differ-
ent times endorsed our monthly
rental checks. No change in own-
ership. Continue sending rent to

[On back]:

Amt.		
Date	Offered	By
		Remarks
		Yee Shew Lung. Send all due.
	[Written in red]:	Trans to new card 2-15-32 NEB. Up 2-20-31
2-24-31	WAH	Continue on same basis - owner- ship O. K.

(Testimony of Charles H. King)

- 7-10-31 WAH J. Allen, atty. rep. owner, will submit for rental reduction to \$144.00 yr. HOLD RENT. Up 7-20-31
- 7-25-31 WAH Letter to Allen req. agreements be signed during current month, if possible. Up 8-8-31
- 8-10-31 WAH Allen making progress in securing new lease at reduced rent. However, there seems to be a misunderstanding over past rental payments. Continue to hold rent. Up 8-20-31
- 9-11-31 WAH Property now in escrow pending trade deal. Hold Rental. Up 9-26-31
- 9-16-31 NEB Thos Bros report sale of property to Chew Dittze. Portion of lots 1 and 2 and all of 3 are specified, but lots 4 and 5 are not mentioned in this notice.
- 9-18-31 WAH Attorney Allen advises deal not completely closed. HOLD RENTAL. Up 9-27-31
- 10- 5-31 WAH J. Allen advises deal only partially complete. Entirely new ownership to take effect during current month. Hold Rental. Up 11-1-31

(Testimony of Charles H. King)

- 11- 6-31 WAH Atty. Allen advises sale and trade deals still pending. Hold Rental.^v
Up 12-10-31
- 12-24-31 WAH John Allen advises prop. still involved in trade deal. Continue holding rent Up 1-20-32
- 1-26-32 WAH Lease being sent to Atty Allen accompanied by rental check for \$96.00 paying rent from 6-1-31 to 2-1-32 @ \$144.00 yr. for account of CHEW DITTZE, new owner.
Up 2-10-32

[Written in red]: Trans to new card 2-15-32 NEB.

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. SUR LEASE NO.

LOC. Grove & 37th SE - N Wall

LEGAL

LOC.

LEGAL

OWNER HELEN S. MEYER

ADDRESS 3666 Grove St. Oakland

Am't

Date Offered By Contact Data B₃ B3 ITA

Under lease to Special Site Sign
Co. 1 yr from 10-27-27 @ \$96.00
12/A

(Testimony of Charles H. King)

- 11-9 -27 HHW Contact with Mrs. Meyers and her stepson. This leased to S. S. S. Co. about 10-25-27 @ \$96.00 yr 12/A for one year. Mrs. Meyer reserved about 14' on corner for window for tenant. Is related to "Farnum" of the Coast Adv. Co.
- 3-16-28 HHW S. S. S. have added additional panel.
- 3-26-29 HHW Lease recorded by King 12-24-27. Calls for 1 yr from 10-27-27 and for 5 succeeding periods.
Up 5-15-29
- 6-18-29 JHB Tenant of store moving out acct. bldg being blt across street which will block rear panel. No further info. Mrs. Meyer says rental being paid regularly.
Up 9-1-29
- 9-18-29 JHB 1-24 Sh panel removed from wall & rental cut from 8.- per month to 4.- per month. Other than this everything the same. Rental coming in O. K. Up 12-1-30
- 12- 4-29 JHB Rental O. K. Mrs. Meyer satisfied.
Up 2-20-30

(Testimony of Charles H. King)

2-24-30 WAH A. D. Harrington, Calremont Pines, Inc. Pied. 1038 called at office advising a syndicate which he represents purchased this prop. from Mrs. Meyer approx. 5 mos. ago. Req. we submit our proposition and claims Spec. Site are
over

Date	Am't Offered	By	Contact Data
			endeavoring to renew lease on basis of 2 Illum. poster panels; made our offer of \$120.00 yr. which he agrees to accept. Will call this evening.
3- 4-30	120.-	WAH	Herrington advises their atty. Breed in First Nat'l Bldg. will serve formal notice on S. S. S. to vacate, as they do not care to renew with S. S. S. Up 3-20-30
4-22-30		WAH	Herrington advises S. S. S. will not sign release - having considerable trouble over same. Up 6-22-30
6-12-30		WAH	S. S. S. have signed release and now on month to month basis until sale now pending is closed. Up 7-10-30
7-19-30		WAH	Harrington called at office. Advises Special Site on month to

(Testimony of Charles H. King)

- month basis; No lease; with understanding they are to vacate upon 10 days' notice. Still desires to make some deal with us and will call again when President of his Company returns from L. A. Up 8-15-30
- 8-20-30 WAH Hopper still in L. A. Progress slow at present. Up 10-11-30
- 9-11-30 WAH Harrington advises for time being at least, no adv. structures will again be placed on the wall. S. S. S. Co. have taken down as their lease was officially cancelled several months ago. Change Grading to B-3. Up 10-1-30
- 10-22-30 WAH Harrington advises sale now pending. Mr. Hooper, President of his Company, will not consider our proposition at this time. Up 12-24-30
- 12-29-30 WAH Same situation. No progress. Up 3-10-31
- 3-10-31 WAH Deal still pending for sale. Up 5-10-31
- 5-11-31 WAH Changed conditions make it difficult to build and inadvisable for our use. CANCEL W. A. H. [Written in red pencil]: W A H
- [Stamped on face]: CANCELLED

(Testimony of Charles H. King)

\$

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. SUR LEASE NO. 2230

LOC. San Pablo EL 54th to 55th 200x115x112

LEGAL Lots 3, 4, and 5 and the Westerly 94' of lots 1
& 2, Block A in Map of Parsons

LOC. Golden Gate Tract

OWNER ~~CHEW DIT TZE~~
GERDON LAND COMPANY

ADDRESS ~~C/o John J. Allen, Jr., 902 Syndicate
Bldg., Oakland~~
905 Syndicate Bldg., Oakland

	Am't		
Date	Offered	By	Contact Data
2-15-32		NEB	See old card in trans. file.
*2-15-32		WAH	10 yrs from 6-1-31 @ \$144.00 yr 12/A Form A-1 (Sale & O. T. A. Clause) from Chew Dit Tze, owner (non-community) 5-C
*11-1-32		WAH	10 yrs from 11-1-32 @ \$144.00 yr 12/A Form A-1 (Sale & O. T. A. Clause) from the Gerdon Land Co. by Donald C Allen, Secretary 6-C

(Testimony of Charles H. King)

- 12-14-32 WAH Letter outlining new rental arrangement dictated today to be mailed with check for 3 months' rent in advance on Jan. 1st, 1933 Reduce rental to \$72.00 4/Ann effec 1-1-33. This suggested by John J Allen atty for owner.
- *1- 1-33 NEB Rental reduced to \$72.00 yr 4/Ann
- 4-30-33 WAH Letter from Allen returning last two rental checks and advising owner will grant 33-1/3% reduction only. Records changed accordingly. *Rental \$96.00 yr 4/Ann
- 5-28-34 WAH May be necessary to increase this rental due to addition of two new style Illum. panels. See nearer next rental payment date.
Up 6-27-34
- 7-13-34 WAH Subordination of Lease Agreement signed by Mr. Hughes making our lease subject to new Deed of Trust covering this property. No change in title.

*These entries written in red.

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS HWY LEASE NO.

LOC. San Pablo & San Diego NW 50.50x101.01

LEGAL Lots 12 & 13, Block 104, Rancho San Pablo

LOC.

LEGAL

OWNER JAS. TAYLOR

ADDRESS Woodland, Calif.

Date	Am't Offered	By	Contact Data	B2	4TA
			Under lease to Special Site Sign Co. from 2-1-30 @ \$20.00 yr.		
11- 6-28		RW	Get ownership in El Cerrito.		Up 2-12-29
5-31-29		RW	Letter to Sacramento office re- questing contact.		Up 6-25-29
6- 6-29		RW	Letter from Sac. promising to contact.		
6-14-29		RW	Letter " " giving rental date and amount. (Submit offer on expiration.)		Up 11-15-29

1556

(Testimony of Charles H. King)

1-13-30 RW Lease expires 2-1-1931. Bring up.
Up 11-20-30

4-18-31 RW Structure still on location abso-
lutely worthless acc't numerous ob-
structions. Up 10-20-31

12-19-31 RW Condition unchanged.

6-30-33 WAH Structures removed. CANCEL.
[Written in ink]: W A H

[Stamped on face]: CANCELLED

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS HWY LEASE NO.

LOC. Alvarado Hwy LS .5 Mi N Alvarado

LEGAL

LOC.

LEGAL

OWNER A. MATTOS (Tenant)

ADDRESS Alvarado (on location)

	Am't				
Date	Offered	By	Contact Data	B2	4TA

Under lease to Special Site Sign
Co. @ \$20.00 yr.

4- 9-28 LG Space only fair. No progress

(Testimony of Charles H. King)

- 10- 2-28 LG Mattos says getting rent about
March or April 15th. First year
up 1929.
- 11- 3-28 LG Could not give payment dates.
Thought it was in August.
Up 5-15-29
- 7- 8-29 RW Mattos says rental paid promptly.
Not sure of length of lease.
Up 9-25-29
- 9-24-29 RW Mattos says no change in situation.
Up 1-30-30
- 2-28-30 RW Rent pd. S. S. S. has good lease.
Up 8-20-30
- 8-25-30 RW Condition same.
Up 4-10-31
- 4-27-31 RW S. S. S. lease still holds.
Up 10-20-31
- 12- 4-31 RW Condition unchanged.
Up 6-1-32
- 6- 1-32 WAH O. K. to pass contact.
Up 10-1-32
- 10-18-32 WAH Check at later date.
- 3-31-34 EAD Structure removed. Cancel card.

[Stamped on face]: CANCELLED

1558

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. HWY LEASE NO.

LOC. Alvarado Hwy RS 50' W Main St. Irvington

LEGAL

LOC.

LEGAL

OWNER C. N. HIRSCH ADDRESS Irvington

Am't

Date	Offered	By	Contact Data	B2	4TA
6-15-31			Under lease to Special Site Sign Co. 1-10x20 Unill Hwy.		

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS HWY LEASE NO.

~~COPY~~

LOC. San Pablo RS 6/10 Mi S Main St. (Rodeo)

LEGAL

LOC.

LEGAL

OWNER MARTIN ADDRESS Premises

Date	Am't Offered	By	Contact Data	B2	4TA
			Under lease to Special Site Sign Co.		
11- 7-28		LG	Structure partially built out. Location undesirable.	Up	2-5-29
12-16-29		RW	5 yrs from 9-1-28 @ \$24.00 yr Ann.	Up	6-10-30
6-28-30		RW	Lease still holds.	Up	11-10-30
11-27-30		RW	Situation unchanged.	Up	5-10-31
6- 4-31		RW	Situation unchanged.	Up	1-1-32
4-20-32		RW	Situation unchanged.	Up	11-20-32
12- 1-32		WAH	Check at later date.		
2-28-34		EAD	Structure removed.	Cancel	card.

[Written in ink]: W A H

[Stamped on card]: CANCELLED

1560

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS SUR LEASE NO.

LOC. E 14th & 78th Ave NW 69x112

LEGAL

LOC.

LEGAL

OWNER J. M. HEAGERTY

(Tenant in Control) OCEAN PETROLEUM CO.

See Mr. Harding, #318 Tapscott Bldg., 19th & Broadway

ADDRESS 4114 E 14th St.
45th Ave & Clement St.
Tele. Fruitvale 1579

	Am't					
Date	Offered	By	Contact	Data	B 7 B3	3TA

Under lease to Special Site Sign Co. @ \$25.00 yr. Formerly under lease No. 2839 from J. Nissen @ \$50.00 yr.

1-15-29 24.- WAH Harding, Mgr G. P. Co. signed lease with me today for E 14th & 52nd and is anxious to lease this to us if he can get S. S. S. Co to T. D. Claims they have vio-

(Testimony of Charles H. King)

lated their agreement. Were to have built in rear of lot so as not to kill approach to station.

- 5-23-29 WAH H. H. W. & myself contacted Harding at his new office #319 Tapscott Bldg. He promises to call S. S. this week.
- 6- 5-29 WAH Harding has been unable to get in touch with King. Will keep trying & advise. Up 7-10-29
- 8-30-29 JHB Harding has endeavored to do something with King about moving sign back but has been unsuccessful. Wants to let matter drop. Up 11-11-30
- 11-13-29 JHB Harding declines to take any further action on this at the present time. Up 2-3-30
- 2-11-30 JHB Can do nothing on this at present. Up 8-1-30
- 8-11-30 JHB S. S. S. Co. has good lease here. Rental O. K. Up 2-1-31
- 2-12-31 WAH Numerous target signs and short approach make this a very poor location. Up 8-1-31

[Stamped on card]: CANCELLED

1562

(Testimony of Charles H. King)

[On back]:

	Am't		
Date	Offered	By	Contact Data
4-20-31	WAH		Panel still here, though dead at present. Up 7-5-31
7-11-31	WAH		O. K. to pass contact Up 3-10-32
3-10-32	WAH		O. K. to pass contact. Up 11-1-32
11-10-32	WAH		Check at later date.
9-19-33	NEB		Special site structure removed. Short approach and many oil targets make location undesirable. Cancel. [Written in ink]: WAH

[Stamped on card]: CANCELLED

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS HWY LEASE NO.

LOC. Tunnel Rd RS 3 Mi N Walnut Creek

LEGAL

LOC.

LEGAL

OWNER V. HOOK

ADDRESS On Premises

(Testimony of Charles H. King)

Am't	Date	Offered	By	Contact Data B2	4TA
				Under lease to Special Site Sign Co. @ \$10.00 yr.	
	11- 9-28		RW	Mrs. Hook unfavorable to signs. Claims S. S. S. paying \$10.00. Plans to have all boards removed when leases expire.	
	5-21-29		RW	Mrs. Hook says rental being paid. Mrs. H. desires removal of all small signs.	Up 10-21-29
	12-20-29		RW	Mrs. H. satisfied.	Up 5-10-30
	5-27-30		RW	Mrs. H. says S. S. S. still holds lease. Does not know rental date.	Up 10-10-30
	10-15-30		RW	Mrs. H. says S. S. S. highway O. K. account of being a traffic direction copy for Antioch Bridge.	Up 1-20-31
	2-19-31		RW	Mrs. H. says S. S. S. will remain indefinitely.	Up 8-20-31
	9-17-31		RW	Situation remains same.	Up 2-25-32
	4-15-32		RW	Situation same.	Up 8-20-32
	9- 1-32		WAH	Check at later date.	
	6-30-33		WAH	Structures removed. CANCEL [Written in ink]: WAH	

[Stamped on face]: CANCELLED

1564

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. HWY LEASE NO.

LOC. Alvarado Hwy (Centerville) LS 2/10 Mi S of
Niles Cutoff Road

LEGAL

LOC.

LEGAL

OWNER

ADDRESS

Am't

Date Offered By

Contact Data B2

4TA

6- 2-31 RW Under lease to Special Site Sign
Co. 1-10x20 Unill Hwy Amer-
ican Creamery.

9-22-31 RW Rent paid to May 1st, 1932.

Up 3-22-32

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS HWY LEASE NO.

LOC. E 14th LS 7/10 Mi E San Lorenzo Jct.

LEGAL

LOC.

LEGAL

OWNER E. W. PRESTON

ADDRESS 117 Montgomery St. S. F.

Date	Am't Offered	By	Contact Data	4TA
			Under lease to Special Site Sign Co. @ \$30.00 yr.	
10-28-28		LG	Carries copy of Stanley Clothiers but should be coated out. Paying no rent at present. Location not desirable.	Up 3-1-29
8-16-29		RW	Bd. must be moved when Hwy. widened.	Up 12-10-29
1-27-30		RW	Letter to S. F. requesting rental date and duration of lease.	Up 3-10-30
1-30-30		RW	Property sold 1-1-30 to J. E. Faustina, 317 - 17th St.	

1566

(Testimony of Charles H. King)

3- 6-30 RW Cancel acct. bd. taken down. Instructions from new owner. Mr. Faustina will not lease property for advertising purposes. [Written in ink]: WAH

[Stamped on face]: CANCELLED

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS SUR LEASE NO.

LOC. Tide Lands & Key System R. R.

LEGAL Sec. 27-T IS R4W

LOC.

LEGAL

OWNER BERKELEY WATER FRONT CO. %
Donald Gregory,

Agent: G. Friends, Solano & Fresno, Berkeley.

ADDRESS Law Firm of Chickering & Gregory
Merchants Exchange Bldg. San F.

	Am't			
Date	Offered	By	Contact Data	A2 4TA

Under lease to Special Site Sign Co. @ \$1200.00 yr.

1-25-29	WAH	Contact with Gregory who advises present S. S. S. Co. signs were placed here before his firm became legal representatives. Does not know of any definite form of
---------	-----	--

(Testimony of Charles H. King)

lease existing. Merely year to year basis. Is not sure of rental consideration. Says they receive check about every 6 months.

- 2-28-29 250.-, WAH Quoted this amt. for entire property to Mr. Gregory, atty, for owners. This on basis of "5 paints". Seems agreeable to proposition but insists our proposition be submitted in writing before he discusses with owners in East.
- 3-22-29 250.- WAH Letter to Gregory outlining our proposition.
- 4-23-29 WAH Our letter acknowledged & they advise they will endeavor to get an expression from owner soon.
- 6-11-29 WAH Gregory advises proper authority on vacation. Will write us on first definite word. Up 8-1-29
- 7-30-29 250.- WAH This quotation covers erection of 5 paints 47x12½. Do not know how much rental S. S. S. Co. have been paying; believe around \$200. yearly.
- 8-15-29 WAH Gregory advises he has been unable to obtain reply from "East" as yet;

OVER

[Stamped on face]: CANCELLED

(Testimony of Charles H. King)

Am't			
Date	Offered	By	Contact Data
			No progress toward contact. Up 9-27-29
9-30-29	WAH	Gregory can offer no decision or expression as yet.	Up 12-10-29
12-31-29	WAH	" out of City until end January.	Up 1-28-30
2-26-30	WAH	" promises to write east again.	Up 4-20-30
4-23-30	WAH	Not interested enough at this time to press Gregory for action which seems almost impossible to obtain	Up 10-30-30
12- 8-30	WAH	Same situation; Pass contact as per G. A. H.	Up 6-1-31
7-29-31	WAH	O. K. to pass contact.	Up 3-5-32
3-14-32	WAH	Check at later date.	
6-30-34	EAD	Structures removed. CANCEL. [Written in ink]: WAH	
6-30-34	WAH	New bridge approach right-of-way necessitates removal of Special Site panels.	

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. HWY LEASE NO.

LOC. Tunnel RD LS 3.3 Mi N Walnut Creek

LEGAL

LOC.

LEGAL

OWNER AMERICAN TOLL BRIDGE CO.

Mr. Oscar Clatt, President

ADDRESS

525 Market. St. San Francisco

Date	Am't Offered	By	Contact Data	B2	4TA
			Under lease to Special Site Sign Co. @ \$12.00 yr.		
5- 8-28		LG	No further information at present time.		
10-11-28		LG	Location only fair. No further con- tact at present.		
3-29-29		RW	Board advertising owner's busi- ness.		
9-24-29		RW	Situation Same.	Up 12-10-29	
1-28-30		RW	Property still owned by Mr. Clatt.	Up 10-10-30	
10-15-30		RW	Property still owned by Mr. Clatt.		1-20-31

1570

(Testimony of Charles H. King)

2-19-31	RW	“ “ “ “ “ “	
			Up 9-1-31
9-17-31	RW	Situation same.	Up 3-27-32
5-24-32	RW	Situation same.	Up 12-10-32
9- 1-32	WAH	Check at later date.	
12-14-32	WAH	Check at later date.	
6-30-33	WAH	Structures removed.	CANCEL WAH

[Stamped on face of card]: CANCELLED

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. ROOF LEASE NO.

LOC. 2365 San Pablo Ave 63x45x70x100

LEGAL

LOC.

LEGAL

OWNER CHAS OHME & CHAS HANSEN

ADDRESS 2443 Telegraph Ave.

Am't

Date Offered By

Contact Data B4

ITA

Under lease to the Special Site
Sign Co. 10 yrs from 8-19-26 @
360.- (5 yrs) 480.- (next 5 yrs)
12/A

(Testimony of Charles H. King)

- 6- 3-27 HHW Consultation with Geo Hughes,
do not want this roof.
Up 8-1-27
- 3-26-29 HHW Lease recorded by King 10-14-27.
Up 4-20-29
- 4-20-29 HHW Bring up. Up 8-15-29
- 8-20-29 WAH Do not want; pass contact.
Up 11-3-29
- 11-18-29 WAH Continue to pass. Up 2-4-30
- 2- 4-30 WAH Now owned by Cent. Nat'l Bank -
See Mr. Killam, who advises S. S.
S. have no lease due to their fore-
closure before S. S. S. recorded
their own lease Advises S. S. S.
have paid no rental since 11-19-29
and intend giving location up.
- 3- 6-30 WAH Killam advises King of S. S. S.
called and again declared his in-
tention of abandoning this roof,
but as yet has not removed his
panels. Has discontinued all
rental payments, however, Killam
will advise when roof is avail-
able. Up 5-20-30
- 3- 7-30 WAH Structures removed. S. S. S.
have dropped and cancelled lease;
we are not interested in location.
CANCEL WAH
[Written in ink]: WAH

[Stamped on face]: CANCELLED

1572

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Berkeley CLASS. SUR LEASE NO.

LOC. Telegraph & Haste SE 70x150

LEGAL College Homestead Assn.

LOC.

LEGAL

OWNER A. W. SMITH

MRS SMITH

ADDRESS American Bank Bldg. 1540 San Pablo Ave.
~~3133~~ College Ave. Berkeley

Am't

Date Offered By Contact Data ~~B₊~~ B3 1TA

See filled office record card in
file.

3-20-29 WAH Mrs. Smith out of town - call
next week.

4- 5-29 WAH Mrs. Smith wants call Sat. A. M.
at 10 o'clock. Has just rec'd 2
yrs. rental 1928 & 1929 but feels
inclined to lease to us now.

(Testimony of Charles H. King)

- 4-15-29 WAH Mrs. Smith has been unable to see Shurtz.
- 4-22-29 WAH Mrs. S. advises she has phoned several times for Shurtz to call. Refuses to cash his rental check.
- 5-15-29 WAH Had Mrs. Smith out to location. She advises Shurtz may be willing to share this location with us.
- 7-31-29 RGB Mrs. S. evidently out of town. Several calls. No contact.
Up 8-10-29
- 8-26-29 RGB Mrs. S. in bed, Not able to be seen
Up 9-15-29
- 9-12-29 RGB Mrs. S. still in bed from auto accident; will not be able to be seen for at least a month
Up 10-26-29
- 10-20-29 35.- RGB Smith called & wanted our quotation on this. We offered \$35.00. Long contact justifying our rental.
- 10-26-29 RGB Leased to S. S. S. Co. for 3 yrs at annual rental of more than \$45.00 per year. No continuation clause.
Up 12-5-30

(over)

[Stamped on face]: CANCELLED

(Testimony of Charles H. King)

Am't		
Date	Offered By	Contact Data
12- 9-29	WAH	S. S. S. have built a 12x25 illuminated poster panel. No advertisement on same as yet. Up 2-12-30
2-20-30	RGB	No change. Posted to Ashby Furniture, hand paint. Up 5-4-30
5-10-30	RGB	“ “ “ “ “ “ “ “ Up 7-28-30
8-10-30	RGB	Smith's still owners. S. S. S. board still here. Up 10-26-30
11- 6-30	RNC	Mrs. Smith advises still owns this. S. S. S. still here. Up 1-2-31
1- 5-31	RGB	S. S. S. Co. still here; Smith still owner. Up 3-20-31
3-23-31	RGB	No change. S. S. S. Co still control. Smith's own. Up 6-5-31
9- 1-31	RNC	No change contemplated here. S. S. S. lease runs until 4-29-32 according to A. W. Smith, owner, located at 603 American Bldg. 1540 San Pablo. Up 11-20-31
12- 2-31	RNC	Smith advises no change in status. Up 2-15-32

(Testimony of Charles H. King)

- 3-18-32 RNC Letter from Smith advising lease with S S S expires 9-1-32. Building to be torn down. Requests we submit offer.
- 4-13-32 RNC Lease submitted. Smith advises may build here. Up 4-25-32
- 5-10-32 RNC Endeavored to secure definite answer from Mr. Smith who is in no hurry to sign new lease here. and have received his promise to make decision. Up 6-25-32
- 9-23-32 WAH Let ride for time being.
Up 11-20-32
- 10-19-32 RNC Smith advises no decision has been reached re. new lease here.
- 12- 5-32 RNC Smith advises drive-in market to be erected here within next 30 days. Up 1-1-33
- 1- 6-33 RNC Steam shovel at work here- Construction under way Up 3-25-33
- 2- 8-33 EAD Illum City Bu. removed.
- 2- 9-33 RNC Building being erected here.
Up 3-15-33
- 3-17-33 RNC Cancel. Building erected here. No space for adv. [Written in ink]: WAH

[Stamped on face]: CANCELLED

1576

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANY

LOCATION Teleg. and Haste S. E. 70' x 150'

LEGAL ~~Blk. 1875~~ Lot # ~~14~~ Blk 7, Lot 1, College
Hmstd Assoc.

OWNER

OR

TENANT A. W. Smith

ADDRESS ~~1728~~ Cedar St. 504 American Bank Bldg.

AGENT

LEASE NO.

CLASS. SUR

CITY Oakland

PHONE

[Stamped on face]: EXTRA TIGHT

Amt.

Date	Offered	By	Vol. 4 B-17	Remarks
------	---------	----	-------------	---------

2-10-27		WG	Thinks sign will interfere with rental of house.	Up 2-14-27
---------	--	----	--	------------

2-15-27	\$30.	WG	May lease to Shell Co. Will not decide till he hears from them	
---------	-------	----	--	--

Up 3-5

(Testimony of Charles H. King)

- 3-16-27 MF Smith not satisfied with \$30. Advises that any tenant, other than present one, would object to sign, Wants \$75. per mo. Up 4-4-27
- 4- 7-27 MF Smith remains firm for more money. Says we might do business some day. Believe constant contact will secure lease.
Up 5-1-27
- 5-16-27 MF Asked us to return when we could offer more money. Up 7-1-27
- 7- 1-27 MF Smith negotiating with a Hotel Co. for possible purchase. Contact on this basis. Up 8-15-27
- 8-19-27 30.- MF Negotiations not yet completed with Hotel Co. Will not consider signs for amount we offer.
Up 9-20-27
- 10-12-27 BFC Contact. Smith still dickering. Wants to let ride for a couple of weeks. Up 11-1-27
- 11- 9-27 BFC Smith gave his wife control. Must see her at Parker Apts. 2715 Channing Way, Berkeley 3511
- 11-23-27 30.- MF Mrs. "S" signed contract with Shurtz in October for 1 yr. not interested

(Testimony of Charles H. King)

[On back]:

Amt.		
Date	Offered By	Remarks
		until \$30.00 was offered. Believes Shurtz could move boards to south portion of property.
12-21-27	MF	F and K unable to use unless Shurtz off prop. Mrs. S. said they have contract and can do nothing until it expires. Up 3-1-28
2-25-28	JHB	Mrs. Smith says will give us chance after Shurtz. One yr. lease is up which is in Oct. Up 5-1-28
5-15-28	JHB	Mrs. S. says to see her in October. Up 8-1-28
8- 1-28	30.- HHW	Good progress. Mrs. Smith requests call later as she will take up with family.
8-13-28	HHW	Have decided not to make any changes at present. Wish to continue getting passes. Up 9-15-28

(Testimony of Charles H. King)

- 9-11-28 HHW Let ride for time being.
Up 11-20-28
- 11-19-28 HHW May change for Grand Lake passes but as it is indefinite as to how long we will continue getting passes for this house it is not advisable to tie up and obligate ourselves to secure on passes alone. Will try for passes and cash when passes no longer available.
- 12- 4-28 HHW Quoted 1 pr. Grand Lake passes. Will try and find out how much longer present agreement has to run.
Up 1-20-29
- 2-15-29 WAH Several calls - no contact.
- 3-11-29 WAH Have learned upon inquiry at above address that
- 3-13-29 WAH Mrs. Smith very anxious to lease to us. Cannot find copy of Shurtz lease; she will call Shurtz this week in an effort to cancel his lease. Wants call next week.
Up 3-30-29

1580

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS SUR LEASE NO.

LOC. Foothill Blvd 300' W Oakland City Limits at
San Leandro

LEGAL Plot of Rancho—San Leandro

LOC.

LEGAL

OWNER ST. MARY'S COLLEGE

ADDRESS Broadway & 30th, Oakland

Date	Am't Offered	By	Contact Data	C2	4TA
			Under lease to Special Site Sign Co.		
12-15-27		LG	Property in name of St. Mary's College, Oakland. For leasing permission see Brother Gregory.		
2- 8-28		LG	Location only fair.		
11- 5-28		LG	Bring up.		Up 3-1-29

(Testimony of Charles H. King)

- 6-20-29 RW Property now leased by Gen. A. J. Gooch, Florist. S.S.S. leasing from keeper without authority from Gen. Gooch. Gen. Gooch will consider a rental of \$50.00 for exclu. & covering 2 hwy boards.
- 7-24-29 RW Inquired of McElroy, R.E.Co. 7th St., Oakland, agents for St. Marys to ascertain if Gooch lease includes advertising rights. See Gooch in three weeks. Up 8-15-29
- 1-27-30 RW McElroy's rights to lease for advertising purposes still in question; will know in 30 days. Up 3-3-30
- 4- 5-30 RW Letter to S.F. requesting contact with Gen. Gooch. Offer of \$50.00 yr. for exclusive and 2 Hwys. bds. to be increased @ \$25.00 Ann. per bd. if more than 2 erected. Up 5-10-30
- 6-13-30 RW G.A.H. advises not to lease. Up 12-10-30

[Stamped on face of card]: CANCELLED

(Testimony of Charles H. King)

[On back]:

	Am't		
Date	Offered	By	Contact Data
12-22-30		RW	Not needed. Up 4-10-31
4-27-31		RW	Can't use account numerous trees along street. Up 11-10-31
12- 4-32		RW	Not needed. Up 5-20-32
5-27-32		RW	Not needed. Up 12-15-32
12-14-32		WAH	Check at later date.
6-30-34		EAD	Structures removed. Cancel WAH
6-30-34		WAH	Widening and improvement of highway in state condemnation proceedings has caused removal of Special Site structures. CANCEL.

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. SUR LEASE NO. 3634

LOC. E 14th SL 26 E 60th 26'

LEGAL Portion lots 1 & 2 Block 4 Eastlawn

LOC.

LEGAL

OWNER ALEXANDER A. SWANFELDT

ADDRESS 6121 E 14th Street

	Am't		
Date	Offered	By	Contact Data
3-26-29			Under lease to Special Site Company 5 yrs from 7-10-25 @ \$30.00 yr S/A
3-26-29		HHW	Lease executed by E.W. Leary to S.S.Sign Co. on 7-10-25 for 5 years. Recorded 10-14-27.

(Testimony of Charles H. King)

- 4- 1-29 JHB Property now owned by A. Swanfeldt.
- 4-10-29 JHB Swanfeldt advises has given written notice to S.S.S. to remove board at expiration of their contract. Plans on bldg. apt. but may not.
- *6- 7-29 JHB 10 yrs from 7-10-29 @ \$30.00 yr Ann Form A-1 from A Swanfeldt (non-comm)
- 7-25-29 JHB Property being rented for fruit stand. Release signed by Swanfeldt and check to be refunded on 8-1-29. Carried as gratis.
Up 8-5-29
- 12-15-30 JHB Cancel. Make unsecured card.^v
WAH
STRUCTURES REMOVED —
CHECK FOR REBUILD OR
CANCELLATION Up 1-15-31

[Stamped on face of card]: CANCELLED

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
Company

CITY Oakland CLASS. SUR LEASE NO.

LOC. E 14th SL 26 E 60th Ave 26

LEGAL Por. Lots 1 & 2 Block 4 East Lawn Tract
LOC.

LEGAL

OWNER A. SWANFELDT

HAROLD PLATZ

EMMA SWANFELDT

ADDRESS ~~6121 E 14th St.~~ Oakland

Am't				
Date	Offered	By	Contact Data	3TA
			Formerly under lease #3634—10 Yrs from 7-10-29 @ \$30.00 Yr. Ann. Form A1 from A. Swan- feldt (Non-com.) Release secured.	
2-24-31		JHB	Fruit stand here; no space.	Up 8-1-31
4-16-31		WAH	No additional space required here at present.	Up 11-10-31
11-18-31		WAH	No additional space required here at present.	Up 6-18-32
12-16-31		NEB	Thos Bros report property sold to Harold Platz	
6- 1-32		RMW	Thos Bros report property sold to Emma Swanfeldt.	
6-3-32		WAH	Check at later date.	

1586

(Testimony of Charles H. King)

[Crest]
Foster and Kleiser
Company

CITY Oakland CLASS SUR LEASE NO.

LOC. E 14th & 99th Ave SW 30x127

LEGAL Lot 4, Block 4971

LOC.

LEGAL

OWNER ~~MR. BEGIER~~

A. H. CHRISTENSEN

ADDRESS ~~852 E 14th St. San Leandro~~

9916 E 14th St.

Am't

Date Offered By Contact Data B3 4TA

Under lease to Special Site Sign
Co. 5 yrs @ \$12.00 (10x20')
\$15.00 (10x42').

7- 7-27 BFC Tied up for some time. Very
friendly.

10-21-27 BFC Same situation.

9-27-28 WAH Begier will endeavor to locate copy
of lease with S.S.S. if he has
copy. Says lease runs indefinitely
until he sells or builds. \$30.00 per
year S/A. Promises to phone in-
formation.

(Testimony of Charles H. King)

11-22-28	WAH	Conditions unchanged here.
3-11-29	WAH	Begier cannot make any change. Cannot find his copy of lease but knows it has period of years to run yet. Up 7-1-29
7-12-29	RGB	Conditions unchanged. Up 12-10-29
1-10-30	RGB	Lease with S.S.S. co. still has some time to run. Begier seems satisfied. Up 6-1-30
6- 3-30	RGB	Begier says is selling property.
6-16-30	RGB	A. H. Christensen, 9916 E 14th St. new owner. Writing to S.S.S. Co. to remove boards. Going to build on prop. No available space. Up 8-1-30
9-10-30	RGB	S.S.S. Co. paint boards removed and lease cancelled. Property now being

[On back]:

Date	Am't Offered	By	Contact Data
			used to manufacture concrete statues. Christiansen says they can never use again and if prop- erty is available for adv. will con- sider F & K. Up 2-20-31
2-21-31		RGB	No space here now for adv. Up 7-26-31
7-28-31		WAH	O. K. to pass contact Up 4-1-32
5- 1-32		WAH	Check at later date.

1588

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANY

LOCATION Davis Hwy. L.S. 1 mi.E. of Davis
OWNER T. G. Schmeiser
ADDRESS Davis, California.
AGENT
NUMBER 00781
CLASSIFICATION Hwy.
PHONE

			Amt.
Date	Offered	By	Remarks
N.L.			
9/23/22	BS		5 yrs from 5/15/19 @ \$10.00 pr yr Pay Ann By SF1895

[Stamped on face of card]:

CANCELLED

Date

Reason

T.D. Order Issued.....

Unearned Rental \$.....

Bill Paid

Location Card Canc. Date.....

Rental Card Canc. Date.....

Space Records Canc. Date.....

Certified By..... Date.....

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANY

LOCATION (B) Davis Hwy LS 2/10 E of Davis

LEGAL

OWNER C. L. Schmeiser

ADDRESS Davis, Calif.

AGENT

LEASE NO. 766

CITY

CLASSIFICATION Hwy

PHONE

Competitor	Rental	Term	Type
Units	Per Yr.	of Lease	of Const.
No. Size	Advertising	Selling Price	Term of Contract

Date	Amt. Offered	By	Remarks
12/27/23		WLF	10 yrs from 12/2/23 @ 50.00 per yr (Lease 781 combined with this)

[Stamped on face of card]: CANCELLED

1590

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
COMPANY

(A) 2/10

LOCATION Davis Hwy. L.S. $\frac{1}{4}$ m E. Davis 950'

OWNER ~~C. L. Schmeiser~~ Pietro Colori

ADDRESS Davis, Dalif. Box 184

AGENT

NUMBER 00766

Sacto

CLASSIFICATION Hwy. & Davis Sur.

PHONE

Fct of Sec. 15 T 8 NR 2 E

Amt.

Date	Offered	By	Remarks
9/22/22	BS		5 yrs. from 12/2/18 @ \$5.00 pr. yr. Pay. Ann. By SF1815
12/27/23	VLF		10 yrs from 12/2/23 @ 50.00 per yr. (Lease #781 was combined with this)
2/23/26	EH		Sold to Greer 2/15/26 address Davis farm

(Testimony of Charles H. King)

		Mr. Greer will not lease until 12/2/26 — Willing for Mrs. Schmeiser to have rental until then
3/ 2/26	WF	Mr. Greer will consider Call 10/2/26 Up 10/1
9/24/26	VLF	Mr. Pietro Calori, Bx 184, Davis says he purchased property on 6/2/26 See Mrs. Schmeiser regarding Spec. Site lease.
10/12/26	VLF	10 Yrs. from 6/2/26 @ \$50.00 Yr.—Ann. "A-1" (Spec. Clause) Pietro Calori
10/12/26	VLF	Wrote to Spec. Site advising to pay us \$25.00 Yr. or vacate Up 11/17
12/ 1/26	"	Mr. Funk going to take up the matter of removing all Spec. Site bltns Up 11/15 2/15
2/11/27	WHF	Gave them notice to vacate within 5 days Up 3/1
3/25/27	VLF	Spec. Site have removed their bltn.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 189 Filed 12/27 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Don G. Westbrook)

Thereupon

DON G. WESTBROOK

was recalled as a witness on behalf of the plaintiff and testified as follows:

FURTHER DIRECT EXAMINATION

BY MR. GLENSOR:

When I was in San Francisco Foster & Kleiser maintained a work yard there. I have seen signs in that yard taken apart and the sections piled up. There was a difference in the type of construction of the signs of the various companies that were competing with Foster & Kleiser at that time. In the course of my business as a leaseman I kept familiar with the type and kind of signs that the various competitors built. Most of the companies had imprints over their signs. Of those that I saw piled up, some of them had imprints on them and some did not. I recognized some of them as being of the type of construction customarily built by competing companies. When I was in San Francisco there was a large pile, six or eight feet high and 16 or 20 feet long. When I came to Los Angeles as lease manager, I know of my own knowledge that signs of competing companies were being brought into Foster & Kleiser's yard here. That was done under my instruction. Some of those were signs of competing companies piled in the yard. There was a pile about the size of a box car.

I have testified that the leasemen were instructed to lease property which was under lease to competitors if

(Testimony of Don G. Westbrook)

they could possibly do so. There were times when they were unable to get the competitors' lease away from them. In such cases I was told by my superior to instruct my leasemen to make an offer somewhat greater or considerably greater than the competitor was paying and leave that offer in the possession of the lessor, after he had found that it was impossible to lease the property.

I am familiar with Plaintiff's Exhibit 128, which is a summary of the plaintiff's operating statements, giving the gross income from 1917 to 1934, inclusive. At your request I have made some calculations of those figures, disregarding 1917 and taking the figures 1918 to 1934, inclusive.

I first entered the outdoor advertising business in 1923 as a leaseman and have been in it almost continuously since, in California for the most part. During that time I have made a study of the history of the outdoor advertising business. I was in business for myself and I was lease manager for Foster & Kleiser and salesman. I have made myself conversant with business by reading various magazines along kindred lines, trade journals, etc., such as PRINTERS INK and the poster magazine put out by the Poster people, SIGNS OF THE TIMES. I have attended conventions and read various books, many of them on advertising, and on one occasion I took a trip and observed advertising in possibly a dozen different States. I was connected for a short time with another company with headquarters in Cleveland, and while I was there I read and studied the various books that were at my disposal in the library of that company. While with Foster & Kleiser Company I read and studied the

(Testimony of Don G. Westbrook)

books that were in their library and read magazines that they had during that time, and I made a thorough study of advertising, as thorough as I knew how to make. I have also taken one or two courses of which advertising was a part, and made myself familiar not only with outdoor advertising but with other forms of advertising. In addition to that, I studied marketing, merchandising, made trade surveys and took up other studies which I felt would enable me to handle the outdoor advertising work in which I was engaged to better advantage. The courses which I took were reading courses and, for instance, the Alexander Hamilton course on business in general. The advertising course in that book is very limited in scope, but it does go into it in some detail. While I was with Foster & Kleiser I was never detailed to read any papers or prepare any data for conventions. I did prepare one paper for Foster & Kleiser Company in connection with a competition which all of their employees in the sales department entered into. I have fixed lease rentals for Foster & Kleiser here in Los Angeles and in the towns that were under my charge in this district. There must have been 20 or 30 towns down here. It is a fact that leaseholds of outdoor advertising companies are worth money and have a value.

Q How, in your opinion, should that value be determined with reference to the lease?

MR. CLARK: Object to that, if the court please, on the ground that the witness is not qualified to express an opinion. I object to it as immaterial and irrelevant and incompetent.

THE COURT: Overruled.

(Testimony of Don G. Westbrook)

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates Exception No. 167.

A There are many different factors that enter into the value of a leasehold. Primarily, the first factor I would take into consideration as being the most important would be circulation; then you would have to take in the topography of the country, the physical features of the obstructions and the approach to the board; and then you would have to take into consideration the size of the property and the number of structures that could be built thereon, the immediate surroundings of the building or of the structure to be erected, because it is a fact that a board in pleasant surroundings would have more value than one erected upon a garbage dump, other factors being equal; and in building or in estimating the value of a leasehold, it would be necessary to make a survey of the property and know the size of the property, know something of the circulation. By circulation I mean the traffic that passes that property, automobiles, pedestrians and street cars.

Q BY MR. GLENSOR: Well, in your opinion, is there any method or formula by which the money value of leaseholds should be calculated and determined?

A Yes, sir.

Q Just yes or no.

A Yes, sir.

Q What is it?

MR. CLARK: I object to that on the ground that the witness has not shown himself qualified to express his

(Testimony of Don G. Westbrook)

opinion as to whether the value of an advertising site may be arrived at by a formula.

THE COURT: Same ruling.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 168.

Q BY MR. GLENSOR: Then the question was: What is the formula that, in your opinion, should be applied in determining money value of leaseholds?

MR. STERRY: May I object to that on the ground that there is no foundataion laid for it and it is entering the domain of conjecture and speculation.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 169.

A The average length of time which a leasehold can be held must be taken into consideration and, in my opinion as an advertising man, a conservative estimate of the length of time during which a structure could remain upon the average location would be six years and, therefore, it would be proper to have a formula taking into consideration seventy-two months' income. It would also be conservative and fair in my opinion to estimate what type of structure would go on the location, the number of structures, whether it happens to be one type or several types, and then from my knowledge of the selling end of the business, it could be estimated what those structures

(Testimony of Don G. Westbrook)

could be sold for per month or per year. Computing this on the basis of 72 months, that would give you the gross income available on that location. Then I would compute from that the value of the location according to the profit that could be made upon those structures, and that would give me the value of that location standing by itself. To that I would add a certain value, depending upon the value of the location as part of the plant of the advertising company that owned it. If it is a key location, it would add value to his plant; if it were an inferior location, I would not add anything beyond the amount that I have stated. If it were a key location, I would add one-third of the net amount that the plant was worth because I would feel that it would be worth that to the rest of the plant. In every plant where showings are sold, whether posting or paint, certain locations are of more value than others and those locations help to sell those which are of less value.

Witness continuing: I first became connected with the Special Site Sign Company in 1929 and have been more or less active in connection with the business in the territory in which they operate since then, with the exception of certain intervals to which I testified before. I would not say that while I was in business for myself as a sales organization that I sold advertising over the entire Pacific Coast, but I had advertising in most of the larger cities from San Diego to Seattle, including Spokane and also Salt Lake City. While I worked in San Francisco, I went to Oakland quite often but not to work. I only made a few calls there in connection with business. There has been an industrial and population development in the

(Testimony of Don G. Westbrook)

East Bay section in the last 12 or 14 years, and it is still developing, growing and increasing.

This statement, starting with 1918, shows the gross annual income for Special Site Sign Company as \$23,962.11. The following year, 1919, shows \$38,276.67.

Q Have you made a calculation of the percentage of increase?

A Yes, sir.

Q What is it?

MR. CLARK: It is objected to as wholly immaterial and irrelevant. If this is a computation of damages, gross income hasn't anything to do with the matter at all.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 170.

A I have calculated the percentage increase in gross income of the Special Site Sign Company of 1919 over 1918. The increase was 59.7%. The increase in gross income for 1920 over 1919 was 10.8%, and for 1921 over 1920 it was 24.2%. In 1922 the gross income was \$36,588.90; that is a decrease of 30.6% in income over the previous year. The average annual increase from 1919 to 1921, inclusive, for three years, was 31.6%.

(Witness continuing:) While I was lease manager in Los Angeles I was instructed by Mr. Musaphia and Mr. Young to keep the independent companies so busy protecting their locations upon which they had structures that they would have no time to sell anything, lease new

(Testimony of Don G. Westbrook)

property or service the structures they had already built. By servicing the structures, I mean keeping them painted and properly erected and in generally good appearance. If poster panels are not properly serviced they will become torn and flagged. A torn poster is called a "flagging poster" and when they get to flagging you have to have a man out to either patch the poster or put on a new one.

Q Assume that in 1922 Foster & Kleiser Company, in competition with the Special Site Sign Company and other independents on the Pacific Coast, had not issued instructions to all branch managers to make up cards representing each or covering each location held by the competitor, and had not issued at that time instructions to the effect that "We must do everything within our power to secure all competitive locations, whether we can use or need such locations or not, the only way to protect our investment in this business is to make our competitors move and keep moving;" and which instructions were repeated in substance in 1924, and which remained in effect until they were specifically rescinded by Bulletin No. 550-A, which has been lost and is not yet in evidence, issued shortly after March 13, 1931; and assume that during that period or at least from 1920 Foster & Kleiser had not controlled over 90 per cent of the outdoor advertising in the territory, and controlled, through leaseholds, more than 90 per cent of the valuable advertising locations and through its ownership of franchises in the Poster Advertising Association and the Outdoor Advertising Association, which were afterwards merged into one association, obtained all of the national business created as a result of those organizations to be placed in their field,

(Testimony of Don G. Westbrook)

that is, the Pacific Coast; assume that those franchises which were referred to in the last sentence are described as follows, speaking of franchises, leaseholds and national solicitorships, "While this is an intangible value, it is at the same time the very crux of the business and its most valuable asset and it represents definitely that which has been built up over a long period of years at great expense, and without which the company could not operate for each of the 507 cities and towns in California, Oregon and Washington in which the company operates it holds a franchise from the Poster Advertising Association and the Outdoor Advertising Association; through these franchises it receives from this association all of the business which is created with them in the coast field; this is an exclusive privilege which brings to Foster & Kleiser the big national accounts from the eastern field;" and assume that pursuant to the instructions contained in the bulletins which are referred to, being issued in 1922 and 1924 respectively, with respect to contacting competitors' leaseholds and securing them, whether Foster & Kleiser needed them or not; that Foster & Kleiser had not made 34,822 contacts on the lessors of competitive property, and assume that from 1919 to 1930, inclusive, Foster & Kleiser had not acquired 97 independent companies operating in 342 cities on the Pacific Coast; also assume that the Special Site Sign Company had not lost upwards of 60 locations through various activities of Foster & Kleiser, which are in evidence here, and their agents, but had only lost the normal turnover in the advertising business which is usual and customary in the advertising business; and further assume that the independent companies, including the

(Testimony of Don G. Westbrook)

Special Site Sign Company, had been able to obtain national accounts prior to March 13, 1931 freely, that is, in free and open competition with the association plants owned by Foster & Kleiser, franchise plants, and had also been permitted or could have participated in the business developed by the National Outdoor Advertising Bureau through the agencies that were members of that bureau; what, in your opinion, would have been the normal average growth, would have been the average growth, leave out the word "normal", the average growth in gross income of Special Site Sign Company from 1919 to 1934, inclusive, over 1918, using that as a base figure?

MR. CLARK: I object to the question on the ground it is without foundation in this: First, that there is no proof in the record anywhere from any witness as to what the normal turnover in advertising leases or outdoor advertising leases was, and an essential part of the question put by counsel is an assumption that there was a normal turnover in leases. Secondly, there is no proof whatsoever that the plaintiff or any other independent could not have participated in business developed by the National Outdoor Advertising Bureau, nor is there any proof whatsoever that the National Outdoor Advertising Bureau developed any business. Furthermore, on the ground that it is improper as a hypothetical question, entirely speculative and the answer would be of no value, and further on the ground that it is purely guesswork, conjectural and uncertain.

MR. GLENSOR: Now, I concede that so far we have not proved what the normal turnover is, and I will amend the question by asking the witness to disregard the words

(Testimony of Don G. Westbrook)

“other than a normal turnover” after the loss of the leases which I mentioned to him.

THE COURT: Before you do that, explain just what you mean by the term “normal turnover.”

MR. GLENSOR: Maybe I can digress for a moment and ask the witness a question or two that will clarify it.

Witness continuing: These advertising leases do not go on forever. In many cases they are renewed and continued for a long time. The factors causing their loss, eliminating any question of interference by competing companies, are, first, the sale of the property to a new owner who will not renew the lease at its expiration, second, the improvement of the property by the erection of a permanent building, third, the use of the property for other than advertising purposes such as an automobile station, a supply station, garage or parking lot. A fourth factor might be the zoning of that particular location so that advertising could not be maintained upon it, and many other factors.

Q Now, I will ask you to disregard the comparison of the 60, I think I said, and upwards of 60 lost locations with a normal turnover; in other words, I will strike out the “normal turnover” from my question—

MR. CLARK: I object to the question as reframed on the ground that it is without proper foundation in the particulars specified in the original objection.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 171.

(Testimony of Don G. Westbrook)

A My opinion is that for the years 1919 to 1934, inclusive, that an average gain in gross income of 20 per cent could be maintained.

Witness continuing: In making my estimate of 20% I have taken into account the fact that there was a depression from 1929 to date. I have prepared a chart or graph illustrating or extending these figures graphically to show the actual income, the average income of 20% and the income extended upon the basis of the average increase from 1919 to 1921.

Q Will you produce it, please?

(Witness producing paper from counsel table.)

MR. GLENSOR: Put it on the board.

MR. STERRY: I am going to object to that on all the grounds heretofore stated; that it is speculative, incompetent irrelevant and immaterial, indulging in conjecture and speculation as to what they would have gained, and necessarily fails to take into consideration many elements, the personal equation, other competition that would have developed, and many elements, leaving it wholly a matter of conjecture and speculative.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 172.

The original chart referred to by the witness was thereupon marked Defendants' Exhibit UU for Identification.

Witness continuing: I actually prepared the lines on there according to calculations.

(Testimony of Don G. Westbrook)

BY MR. GLENSOR:

In the left-hand column the figures in an ascending scale represent thousands of dollars. Across the chart the squares represent the years from 1918 to 1934, inclusive. The lowest line is black. I start that line from zero and the ascent for the first square is 1918. That represents the gross income of Special Site Sign Company for 1918 as taken from our records, as shown on Plaintiff's Exhibit 128. In 1919 there was a gain of 59.7 per cent, so that the black line thereupon goes up to the point where you see it on the chart. It goes upward to the end of 1921 where it makes the first dip. From there on, the black line is carried across the chart in ascending and descending gradations, according to the gain or loss by years, clear over to 1934. The total gross income for those years down to and including 1934 is \$698,818.94. I have already testified that the average annual increase up to the end of 1921 amounted to 31.6 per cent. Using the year 1921 as a base figure, the actual gross sales of the company in 1921 were \$52,705.14. Using that as a base figure in a average per cent gain of 31.6 per cent, I have projected this line to the end of 1930. From there on the green line dips. That represents the adjustment for the years of the depression in the advertising business. To represent that depression I computed the increase and decrease in our actual gross income, and taking those percentages I applied them to this number up here and this green line is a graphic chart of that. The red line on the chart, starting at the end of 1918, represents an increase in gross annual income of 20 per cent, using the 1918 income as a base. In my experience

(Testimony of Don G. Westbrook)

that average could have been maintained through the depression. I have taken the depression into consideration and I think, speaking very conservatively, it could be maintained. I don't think the 31.6 per cent annual increase could have been maintained right on through the depression.

BY MR. CLARK:

The gross figures for 1921 are \$52,705.14. In projecting the green line I took 31.6 per cent of that figure and added it to that which gave me \$69,359.96, which was the potential gross in 1922. I took 31.6 per cent of that and added that amount to that figure. I followed a similar process for each of those years. I followed a process of that kind in projecting the red line except I used a 20 per cent factor.

BY MR. GLENSOR:

The black line represents the actual increases and decreases in the income of our company. ,

Q From your knowledge of the operations of the Special Site Sign Company, and having in mind the factors involved in the hypothetical question which I propounded to you, what, in your opinion, would have been the average, the net profit at which the Special Site Sign Company could have operated, with the elimination of those factors?

MR. STERRY: Objected to as purely speculative, invading the province of the jury, and merely guesswork, and no proper foundation laid for it. Necessarily, many elements which have not been stated to the witness, and almost impossible to be taken into consideration.

(Testimony of Don G. Westbrook)

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 173.

A They could have made 25 per cent net profit on their gross income.

Witness continuing: I have made a computation carrying the projection of those figures into tabular form. Up at the top of this sheet I have four segregations; the one on the left I call the black line figures, the next one the green line figures and the next one the red line figures. The last column shows the red line with the adjustments for 1931-1934. That shows a still further adjustment made to take care of the depression years. That is to illustrate the possible effect of the depression on the 20 per cent line. I have projected that at your request, just for illustration, and I have made an addenda to that chart to graphically illustrate that.

MR. STERRY: Now, we object to this on the same grounds that we have been urging to the exhibition of this chart, as incompetent, irrelevant and immaterial and wholly speculative and conjectural and no proper foundation laid for it, and an invasion of the province of the jury.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 174.

(Testimony of Don G. Westbrook)

Witness continuing: The dotted black line which I have added onto the red line at the end of 1930 represents an adjustment in the red line to take into consideration the depression still further than what I have done previously. That does not accord with my opinion of what would happen, but if in the event the 20 per cent line had been affected in the same degree as the actual increased and decreased earnings of the company, then it would be shown as in the addenda which I have pinned on the chart.

Q Assume that the red line as you have expressed it in your opinion, the 20 per cent increase, had been maintained to the end of 1934, and also in accordance with your opinion 25 per cent of the gross sum thus realized would have been realized in net profits, what would have been the result in net profits?

MR. STERRY: That is objected to on the grounds that it is purely speculative and in invasion of the province of the jury and no proper foundation laid and mere guesswork.

THE COURT: Objection overruled.

To which ruling the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 175.

With the consent of the court it was thereupon stipulated that the entire line of examination with reference to the computations of the witness based upon the gross income of the company, as illustrated by the chart, should

(Testimony of Don G. Westbrook)

be deemed subject to the same objection, ruling and exception.

A The sheet which I have just produced and given to you covers the figures as given on the chart for the black line and the red line, and leaves the green line, which is for illustrative purposes, out of the question and also leaves the broken line on the chart out, that also being put on merely for illustrative purposes. I have made a summary or total of the figures that are represented by that red line on the chart, that is, the 1918 figure, increased by an average increase of 20 per cent per annum. The total of that is \$2,538,318.34. Using those figures, I have made a calculation of the net profits at 25 per cent. I took the sum which I just read and from that I deducted the sum of the actual gross income for the years 1918 to 1934 inclusive, and that left a remainder of \$1,839,499.40. Then I took 25 per cent of that which gave me \$459,874.85.

MR. GLENSOR: If the court please, I offer in evidence the chart which has been identified by the witness, together with the addenda, as one exhibit.

MR. CLARK: To which we object, if the court please, on the special ground, in addition to the grounds heretofore urged, that the witness, by this chart, seeks to claim damages for a period since the filing of the litigation in this case, the complaint having been filed on June 11, 1932, and this all going to the end of 1934.

THE COURT: For the purpose of getting it clear myself, isn't it somewhat similar to these damage actions suffered, or that will be suffered in the future? In other words, if they show a condition existing that, from the

(Testimony of Don G. Westbrook)

evidence, it is likely to continue, then a verdict may include what is likely, what is justified up to the time of the verdict? It seems to me, an answer to your suggestion, that the verdict could not include anything in the future. I am, I think, clear on this point, that no damages can be claimed beyond the present time, by reason of the probability that the unlawful acts, assuming that they were unlawful acts, will be continued. That would bring it in line entirely with a personal injury case.

MR. GLENSOR: Correct.

THE COURT: Doubtless counsel agrees with that.

MR. GLENSOR: Absolutely no question about that.

THE COURT: But what you are claiming is that you can recover for damages likely to occur in the future, as a result of acts already done, accomplished and performed?

MR. GLENSOR: Yes, sir.

MR. STERRY: That is on that theory. And on the theory that this evidence is admitted on that, I make the further objection that in my judgment there is no evidence of any foundation laid to show any damages beyond the time of the filing of the complaint, for wrongful acts claimed to have been committed prior to it.

THE COURT: Mr. Sterry is merely discussing the case. The Plaintiff purports to show that, or rather, he starts in with this lower line there which shows the actual gross, as I understand it. He shows another line which he claims would have been the case except for the acts, certain acts which he thinks have been proven against the Defendant, performed by the Defendant. Well, now, that is his theory of the case. I fail to see why he may not properly show that or why that is subject to any objec-

(Testimony of Don G. Westbrook)

tion. Its accuracy, probably, of course, being the subject of complete and exhaustive cross examination. That is my present view. I have not analyzed the reasons given and I could not state precisely the theory of the witness, but I suppose that will be properly ventilated when it is subjected to cross examination. Let the documents be admitted.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 176.

The chart and the addenda thereto were thereupon received in evidence and marked Plaintiff's Exhibit 190 in evidence. A true and correct reproduction of said Plaintiff's Exhibit 190 in evidence follows:

(Photostat)

MR. GLENSOR: I offer in evidence the summary or tabulation of the figures carried out by each of the three lines, as testified to by Mr. Westbrook.

MR. CLARK: That is objected to on each and all of the grounds stated in our objection to the offer of the chart and the addenda thereto.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 177.

The summary tabulation was thereupon received in evidence and marked Plaintiff's Exhibit 191 in evidence. A true and correct reproduction of said Plaintiff's Exhibit 191 in evidence is as follows:

SPECIAL SITE SIGN COMPANY

GRAPH OF ANNUAL GROSS INCOME

Increase in actual gross income
(BLACK LINE)

1919 over 1918 59.7%

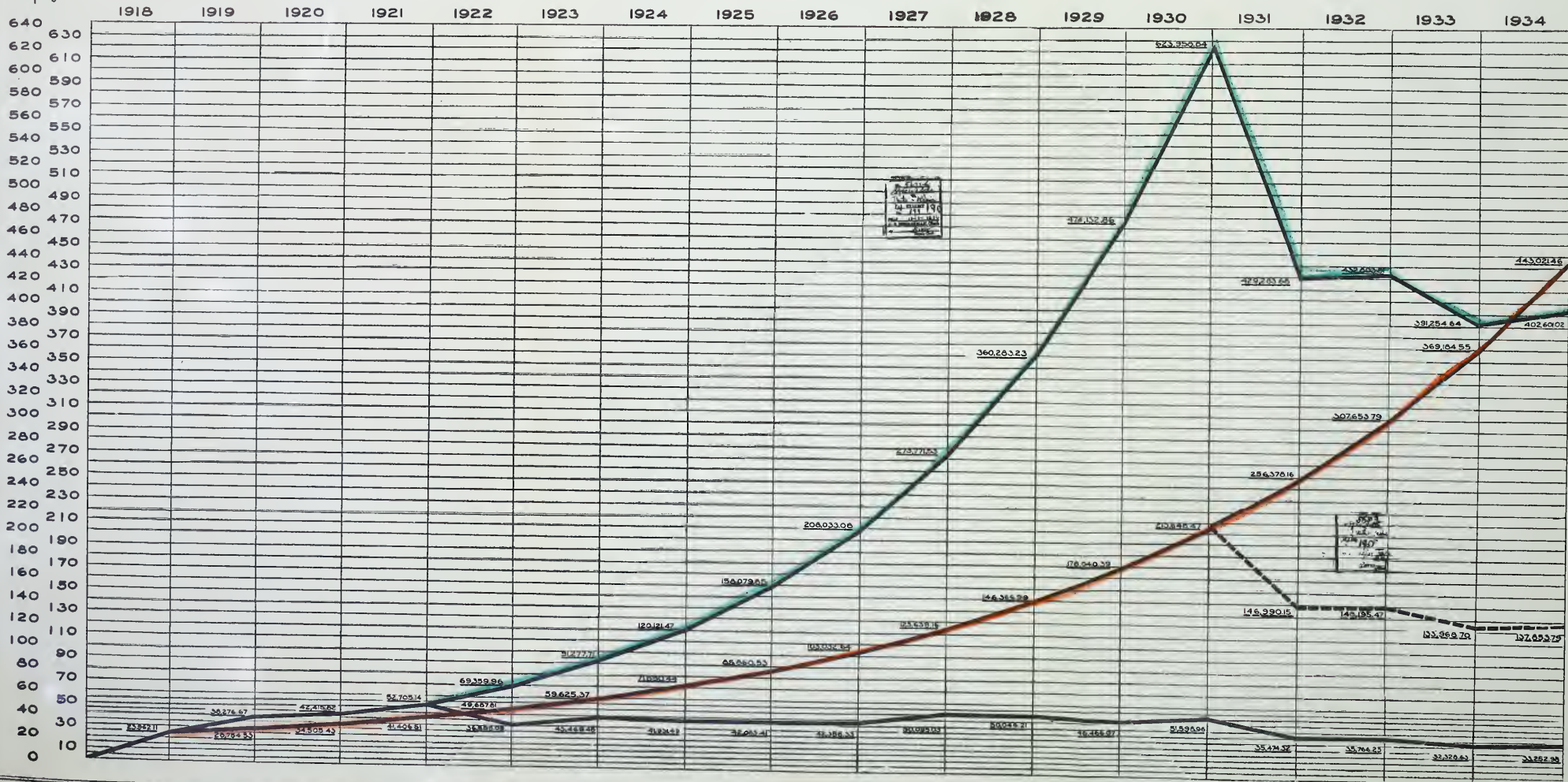
1920 over 1919 10.8%

1921 over 1920 24.2%

Average increase 1919 to 1921 inclusive 31.6%

RED LINE represents potential gross income with an annual increase of 20% based upon 1918 income.

Thousands
of dollars



[PLAINTIFF'S EXHIBIT No. 191.]

BLACK LINE		GREEN LINE		RED LINE		RED LINE		With Adjustment for Years 1931 To 1934 Inclusive.					
Gross Income Actual	Percentage Increase or Decrease	Average Percent Increase	Actual Gross Income 1918 to 1921 Inc.	Potential Gross Income Annual Increase 31.6% 1922 to 1930 inc.	Potential Gross Income 1931 to 1934 inclusive	Percentage Increase or Decrease 1919 to 1934	Actual Gross Income 1918	Potential Gross Income 1919 to 1934 inclusive	Percentage Increase or Decrease	Actual Gross Income 1918	Potential Gross-Income 1919 to 1930 inclusive	Adjusted Gross Income 1931 to 1934 inclusive	Percentage Increase or Decrease
1918	23,962.11		23,962.11			0	23,962.11	23,962.11	0	23,962.11		23,962.11	0%
1919	38,276.67	59.7%	38,276.67			59.7%		28,754.53	20%		28,754.53		20%
1920	42,415.82	10.8	42,415.82			10.8%		34,505.43	"		34,505.43		"
1921	52,705.14	24.2	52,705.14		157,359.74	24.2%		41,406.51	"		41,406.51		"
1922	36,588.09	*30.6		69,359.96		Av. 31.6%		49,687.81	"		49,687.81		"
1923	43,469.45			91,277.71		"		59,625.37	"		59,625.37		"
1924	41,931.49			120,121.47		"		71,550.44	"		71,550.44		"
1925	42,083.41			158,079.85		"		85,860.53	"		85,860.53		"
1926	42,358.33			208,033.08		"		103,032.64	"		103,032.64		"
1927	50,095.03			273,771.53		"		123,639.16	"		123,639.16		"
1928	50,046.21			360,283.33		"		148,366.99	"		148,366.99		"
1929	46,466.07			474,132.86		"		178,040.39	"		178,040.39		"
1930	51,598.96			623,958.84	2,379,018.63	"		213,648.47	"		213,648.47	1,138,118.27	"
1931	35,474.32				429,283.68	*31.2 %		256,378.16	"			146,990.15	*31.2 %
1932	35,766.23				432,803.81	.82%		307,653.79	"			148,195.47	.82%
1933	32,328.63				391,254.64	*9.6 %		369,184.55	"			133,968.70	*9.6 %
1934	33,252.98				402,601.02	2.9 %		443,021.46	"			137,853.79	2.9 %
698,818.94					4,192,321.52			2,538,318.34	"			1,729,088.49	

		1918 TO 1934 INCLUSIVE	
(Red Line With Adjustment)	Gross Income	1,729,088.49	
	Potential Net Profits at 25%.....		432,272.12
	Less Actual Net Profits.....		24,054.41
	DAMAGE.....		408,217.71

*These items shown in red ink.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 191 Filed 12/27 1934 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Don G. Westbrook)

MR. GLENSOR: I offer in evidence the computation or summary of the loss, made by the witness, showing 25 per cent of the difference between the figures represented by the black line and the figures represented by the red line on the chart.

MR. CLARK: That is objected to on each and all of the grounds stated in our objection to the offer of the chart and addenda thereto.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 178.

The computation or summary of the loss was thereupon received in evidence and marked Plaintiff's Exhibit 192 in evidence. A true and correct reproduction of said Plaintiff's Exhibit 192 in evidence follows:

(Testimony of Don G. Westbrook)

[PLAINTIFF'S EXHIBIT No. 192.]

BLACK LINE

	Actual Gross Income	Percentage Increase or Decrease	Average Percent Increase
1918	23,962.11		
1919	38,276.67	59.7%	
1920	42,415.82	10.8%	
1921	52,705.14	24.2%	31.6%
		[This figure in red ink.]	
1922	36,588.09	30.6%	
1923	43,469.45		
1924	41,931.49		
1925	42,083.41		
1926	42,358.33		
1927	50,095.03		
1928	50,046.21		
1929	46,466.07		
1930	51,598.96		
1931	35,474.32		
1932	35,766.23		
1933	32,328.63		
1934	32,252.98		
	698,818.94		

(Testimony of Don G. Westbrook)

RED LINE

Actual Gross Income 1918	Potential Gross Income 1919 to 1934 Inclusive	Percentage Increase
23,962.11	23,962.11	0%
	28,754.53	20%
	34,505.43	"
	41,406.51	"
	49,687.81	"
	59,625.37	"
	71,550.44	"
	85,860.53	"
	103,032.64	"
	123,639.16	"
	148,366.99	"
	178,040.39	"
	213,648.47	"
	256,378.16	"
	307,653.79	"
	369,184.55	"
	443,021.46	"
	2,538,318.34	
<hr/>		
Gross Income 1918 to 1934		
inclusive	\$2,538,318.34	
Less Actual Gross Income..	698,818.94	
	<hr/>	
	1,839,499.40	

(Testimony of Don G. Westbrook)

Potential Net Profits @ 25%.....\$459,874.85

[This figure in red.]

DAMAGE\$459,874.85

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 192 Filed 12/27 1934 R. S. Zimmerman,
 Clerk By Cross Deputy Clerk

CROSS EXAMINATION

BY MR. CLARK:

I did not calculate the average per cent of increase per year in the average net profit of the Special Site Sign Company. I couldn't tell you whether or not the average per year exceeds four per cent, I don't know. As indicated on that chart, the depression began to be felt by our particular company by the end of 1930, at least the figures make it appear that way. It might have started some time before that but it is not reflected by our figures. The drop between 1928 and 1929 was undoubtedly due to the fact that Foster & Kleiser prosecuted a very severe campaign against the Special Site Sign Company during that period I know they did. I was connected with Foster & Kleiser until August, 1928 and I was connected with Special Site Sign Company in 1929. My first work with them was in January of that year. I actually opened my office where I did selling in San Francisco on May

(Testimony of Don G. Westbrook)

1st. My capacity with them was that I was their exclusive sales representative in San Francisco.

I consider that I have been in a more or less independent capacity in the outdoor advertising business since May 1, 1929 as an agency and also a part plant owner. The agency was an exclusive outdoor advertising agency. I was in that about a year and a half, to the best of my recollection. During that period I became a part plant owner. I couldn't answer offhand how long I was the owner of a plant or part of a plant. When I was exclusive sales representative for the Special Site Sign Company in San Francisco I was also exclusively selling in that same territory for seven or eight other companies. So, during that period, I was not only selling for the Special Site Sign Company but was also selling for the seven or eight other companies. When I was a plant owner, my plant was very small. I only got started in the business and only had a few boards erected, possibly half a dozen. I couldn't tell you offhand what the gross income from those boards and the operation of that plant was. My net profit from the operation of those boards was nothing. I did not make any net profit. I was only in that business a short time and I depended upon the income from my brokerage business or exclusive sales business to get me started in this other business. I had a very fine income from my sales business. Then after the Foster & Kleiser Company purchased the La Fon Company and my sales dropped off and my income with it, I no longer had that income to keep up my end of my investment in the plant. I had as an equal partner in that business Mr. Charles King and we were just starting in San

(Testimony of Don G. Westbrook)

Francisco. The business was only continued for a short time and I sold out my interest to Mr. King and took in a lump sum the value of the contracts which were on that plant. Therefore, the profits were never figured. I made some profit in the operation of the plant. I can't tell you how much. My books of account are in San Francisco. They are not available. I don't know if they have been destroyed. I did not put them away. They became lost. I could reconstruct them over a long period of time, possibly two months.

I am a Vice President of the Special Site Sign Company and have been for about two years. I just have a qualifying share of stock in the company. As Vice President of Special Site Sign Company I handle sales and leasing. The experience I have had with Foster & Kleiser Company as a leaseman at San Francisco, lease manager at Los Angeles, in the sales department at San Francisco, and my experience with the Special Site Sign Company and my experience as a plant owner for myself along with Mr. King, are the only experiences I have had in operating an outdoor advertising plant. I had a little experience in the mid-west, but I would not count that anything. It was very short. I was a leaseman at Toledo; that did not have a thing to do with the operation of a plant. None of the companies with which I have been connected and have had experience have ever made a net profit of 25 per cent.

I didn't say that the Special Site Sign Company could have made a net profit of 25 per cent on a gross of \$623,-958.84 in 1930. You read your figures incorrectly. You are taking the figure for the green line on the chart and

(Testimony of Don G. Westbrook)

applying the red line percentage. The profit which I figure we should have is 25 per cent on the red line.

MR. CLARK: You give us in the light of your experience now as a plant operator the reasons why you tell the jury that the Special Site Sign Company could have made 25 per cent on \$443,021.46 gross in 1934; what is your first reason?

A I don't give any reason.

Q You understood the question, didn't you?

A Yes, sir.

THE COURT: He has answered the question.

MR. CLARK: He said he does not give any reasons, your Honor.

THE COURT: Yes.

BY MR. STERRY:

The formula I gave for valuing outdoor advertising leases was based upon advertising leases similar to those used by the Special Site Sign Company and Foster & Kleiser Company. I am familiar with the leases they employed. I know that there are two forms employed by the Special Site Sign Company, one a pink form which provides for a lease of one year with an option of five, and a blue form somewhat similar to Foster & Kleiser Company's lease in wording. Both of those forms do not provide for the surrender of the lease if the property is used for other than outdoor advertising or is sold. The Special Site Sign Company's lease was not a straight lease and there would be an exception, but not the one you named. Under the lease which the Special Site Sign Company took, they could hold the property if it was sold. I took 17 leases for the Special Site Sign Company

(Testimony of Don G. Westbrook)

in July and the first week of August, this year, and every one of those was a straight lease. I didn't investigate the particular leases that have been introduced here in evidence with any particular care and it is not within my knowledge exactly what those leases contain. I was merely speaking from my knowledge of our lease forms generally. The terms of the lease would make a difference in the way I valued it, if you were taking particular locations, but over a period of time you can strike an average. In getting a formula to value leases, the terms of the lease do make a difference. It was not my understanding when I said that there was a formula by which the leases that were lost could be valued, that those leases were straight leases and were not subject to cancellation if the property were sold or used bona fidedly for other than advertising purposes. In making this formula I think that it could be applied generally to all the leases that the Special Site Sign Company had regardless of where the property was located. My formula is to determine what we could sell the advertisement on the leased location for, multiply that by 72 and take 25 per cent of that. If it were a key location, we added to it one-third or $33\frac{1}{3}$ per cent. I think that the formula, including the addition of the $33\frac{1}{3}$ per cent to the 25 per cent, could be applied to all of the Special Site Sign Company's locations. Nearly all of them that we lost were key locations. You can apply that formula to all locations regardless of the location of the property leased; I think you could. I made a distinction between the two types of locations we had, whether they were key locations or not key locations, in that, we considered that in a key

(Testimony of Don G. Westbrook)

location we add to our first appraisal one-third of the amount of that so as to provide for its value to the plant as a whole. When you asked me if that could be applied to all of our leaseholds or locations, we would have to make a distinction in the application of that formula in order to have it correct. It is not my formula to take the income which I think I could get from the leased location and multiply that by 72 and then before you take 25 per cent, if it is a key location, you add a third to that figure that you get by the multiplication. We don't do it that way. If we get a lot on which we have a lease to figure the value of that, we decide what we could sell the advertising space for and then we multiply that figure by 72, providing that the figure is a monthly figure, then you take 25 per cent of the result. Assuming that that 25 per cent of the result is X dollars, you add to that X dollars one-third of its amount due, if it is a key location; if it is not a key location, we would let the figure stand as it is. If you take this formula consisting of adding one-third, you could fairly apply that to locations that were out in the country where we could get any amount of space. A place might be a key location where there was plenty of other space just like it to be leased. I wouldn't decide that a location was a key location which was a sign on a country road and that there was any quantity of vacant property that we could lease just as good on each side of it. I would have to have more factors. If it were on a boulevard out in the country and there was plenty of property in the immediate vicinity of the same character that would give you the same kind of a show-

(Testimony of Don G. Westbrook)

ing, I would call it a key location providing it had a long approach, heavy traffic by it and could easily be read by the travelling public and there were no conflicting factors that entered into the value of the location, and that the topography of the road was such that a good structure could be built and maintained and all the other factors that enter into the value of an advertising structure. If you have a location on the boulevard between here and Santa Barbara on the main highway and it had all the features I say that it had to have so as to call it a key location, but you could rent a site a hundred feet either way from it that would give you the same advertising value, the same exposure and everything else, *if* it were a good location, I would still feel that I was justified in adding 33-1/3 per cent to my X dollars because if it is a real good location it helps to sell those that are not so good. If we have a location that we leased for \$12 a year and some one came along and wrongfully took it away from us and we could go down the road 150 feet and secure another location for \$10 or \$12 or \$15 that would have exactly the same length of approach and where we could put our posters exactly the same, under that situation I still say we would be justified in adding 33-1/3 per cent to the X dollars. That is my testimony.

In getting this figure I take the amount that I figure we should be able to sell the site for rather than the actual amount that we do sell it for because when I appraise the location I fix the value according to my best idea of what I can sell that type of structure for on that particular location. Assuming that the Special Site Sign Company has gotten a location, has built a bulletin and has sold

(Testimony of Don G. Westbrook)

the advertising on it for a certain amount of money and that location is lost, the justification for taking a higher figure than the one for which it was actually sold is that the Special Site Sign Company had been forced to sell what they term "broken showings", due to the fact that they have not a complete showing of posting or perhaps a complete showing of paint. Therefore, they are handicapped in their selling.

I am an officer of the plaintiff and I understand they are suing for damages. And I understand that my testimony is being given in aid of their case.

Assuming that we have sold a certain location for a certain amount of money over a certain period of years and we are wrongfully evicted from it and we are asking damages for it, and applying the formula to fix the value of that lease, I do not take the money we actually got from it but the money we ought to have gotten and were unable to because in appraising a location, and I can only speak for the way that I would appraise it, I would appraise it according to the amount which I could sell it for, in my opinion, and that amount is based upon what I have sold and comes from my experience in this business.

Q Now, when you say "that you would sell it for," do you mean you would sell it for if you were selling Foster & Kleiser service or selling for the Special Site Sign Company?

A Well, in a number of cases I sold for the Special Site Sign Company and got higher prices than I could selling for Foster & Kleiser.

(Testimony of Don G. Westbrook)

Q I thought you said you could not sell higher because you had broken showings and were unable to sell anything on account of this terrible competition you were under?

A You were speaking about certain locations.

Witness continuing: When I have a site and I appraise it, assuming I do not get the money for it that I think we are going to get but sell it for a good deal less and the sign is taken away from us, I feel justified in adding that higher figure when I am unable to sell it for that, for this reason, that the reason that we can't get that price appears to be because of the acts of conspiracy, sabotage and espionage on the part of the defendants. Taking our site and assuming that all that I am valuing is the loss of that particular site under the sabotage and espionage, and if this is still going on I have only gotten X dollars for it and if I keep it I continue to get X dollars for it, I say that if it is taken away from me and used, I should ask XY dollars for it. I justify that because I feel that the real value of that location is the value it would be if we were not being robbed of our rights on the location and, therefore, I appraise it according to the way it should be appraised if we were legally protected in our rights on that location. My idea of the value of a leasehold interest is what it is worth. That does not mean what we could sell it for to somebody else who wanted it for substantially the same purposes. I think that a leasehold interest has a value much more than it could be sold for. If I had gone out and rented a corner that is what we call a key location but I haven't gotten ready to put anything on it and

(Testimony of Don G. Westbrook)

an illegally evicted from it, the formula could still be used. I think that it would be fair to the other fellow whom I was asking to compensate for it. I don't think that the only question in that unused leasehold interest is the question of its value as to what you could sell it for if someone else wanted to use it for that or some other essential purpose. I do not know whether I could sell a leasehold interest, as distinguished from the advertising on it, built or unbuilt, valued on that formula to an outdoor advertiser or anyone else. I have never figured out how long it would take a person engaged in the advertising business to get his money back, under this formula. I don't know whether it would be $8\frac{1}{2}$ years or not.

Q I show you now—what exhibit is this?

MR. GLENSOR: It is not in evidence yet. Read it to him.

MR. STERRY: It is the same that you have been using.

MR. GLENSOR: There are dozens of them in evidence.

Q BY MR. STERRY: I show you a lease which counsel states is similar, and ask you to read this clause: "It is expressly agreed, that the lessor may order the advertising sign-boards removed at any time by giving the lessee thirty days' notice in writing, in case the lessor sells the premises, or improves the same by erecting a building on said premises, or leases said premises for other than advertising purposes, and upon consummation of said sale, or improvement thereon, evidenced by passing of deed or building permit, respectively, the lessor shall

(Testimony of Don G. Westbrook)

refund to the lessee the rent paid in advance prorata, from the time of the removal of its boards. In case the boards should be removed pursuant to any such notice, and the proposed sale or improvement should not be made forthwith, then the lessee shall again have the exclusive right to replace its boards on said premises, and this lease shall continue in force for the term above mentioned." Now, did you know, as a matter of fact, that all of these pink forms of leases used contained that clause?

A Yes.

Witness continuing: Mr. Sterry, I did not say all their leases were binding upon the lessor. Over a period of time we had at least six or eight different forms of leases to meet the conditions that we had to work under. And the A-1 form of lease, which we use now, cannot be canceled unless the property is improved by the erection thereon of a permanent building. Other leases that we used, such as the one that you just now read, have those conditions, and those pink leases are mostly the older form of leases which we do not use any more.

Q Now, the blue form of lease contains this clause: "In the event said property is improved by erecting thereon a permanent building, this lease shall thereby be terminated; the lessee shall, upon the return to it of all rent paid for the unexpired term of this lease and upon thirty days' written notice from the lessor that such permanent improvements are to be made, remove said signs and structures from said property; in the event such improvements shall not be commenced within thirty days after the removal of such signs and structures, the lessee

(Testimony of Don G. Westbrook)

shall have the right to re-enter said premises and reconstruct said signs and structures." Now, you would regard that as a much better lease for the outdoor advertiser than the one on that pink form, would you not?

A Oh, yes.

Witness continuing: I would consider this blue form A as next to the best form for the outdoor advertiser. The best form would be a ground lease or one that cannot be cancelled. If we had a lease on this blue A-1 form and lost it, in this particular case I would still apply the formula. If I had a lease under the pink form and lost it, I would still apply the formula. It is true that there are many more contingencies of failure under the pink form but in cities and towns where there is no Foster & Kleiser competition, many times you don't need a lease of any kind whatsoever. A verbal permission will carry on the property for years and the pink form there is sufficiently good to take care of outdoor advertising if you have honest competition. I have operated in towns where there has been that ideal condition, in Toledo, Ohio and at Spokane. The pink form of lease gives a good many more contingencies under which a lessor can cancel the lease and our term is not nearly so secure under the pink lease as it is under the blue. Nevertheless, if we lost a lease, I would still figure its value on the same formula because we are applying the law of averages in our business. In making this formula I took into consideration the fact that in a large community you normally lose a number of leases even if there is not any competition. If you were called to carry on an outdoor advertising business a loss of a certain amount of advertising structures

(Testimony of Don G. Westbrook)

is something you have got to anticipate. During the years I was in Los Angeles there was a very great real estate boom on and property was changing hands very rapidly. Even Foster & Kleiser lost a great number of leases. I was up north when the miniature golf course craze struck Southern California. We had a few courses up there. We lost very few locations on account of people wanting to turn their property over to miniature golf courses. I know that throughout Oakland and San Francisco a great number of locations were lost because of the changing of property to golf courses.

I multiply the monthly income that I assumed I could have received by 72 because the average expectancy that we would have upon a lease we thought would be 72 months. From my experience, realizing that each individual lease varies, I would say that the average lease runs for much longer than six years. I do not say that the average life of our leases was six years. We reached that figure by scanning our business and looking at the locations upon which we had had not quite so much trouble. We had stayed on these locations longer and on a number of times the company had been on them for many, many years. After looking the situation over and taking into consideration the fact that we were making an estimate which would not include illegal practices of competitors, we estimated, and my experience told me, that six years would be a very conservative figure to establish as an average for a plant. In taking an average it is true that you would find leases longer and shorter, but I was honest in assuming that 72 months was a fair average of the time that an outdoor advertiser was per-

(Testimony of Don G. Westbrook)

mitted to remain on the premises where there was no unfair competition. If we had been on this property five years and six months, I would still assume that you should value the lease of that six months under this formula. It is just as valuable at that point if it has been left alone and possibly more valuable than the day we took it. If we had a binding lease for six years and no question of renewal, I would figure that the loss of the last six months would cause as much damage as right after the lease was executed because without any illegal interference we would naturally expect to renew a lease. I have said that 72 months was a fair length. I do not want to change that. I think absolutely that if we stayed on the premises five years that you could still apply that formula. The length of time doesn't make any difference when you are applying an average rule.

A change in traffic conditions would in the majority of cases cause the place to increase in value. Very frequently many places have been lost or passed out of value when there was a new highway built. If it is a cut-off or better route, the older location would pass out. I know the old Ridge Route between here and Bakersfield and also the new cut-off. If we had an advertising sign on the old Ridge Route before the new cut-off and we lost it after the new cut-off, I would not apply this formula to it. We applied this formula not because of what the State did. I also would like to reiterate that we are applying the law of averages to the business and our expectancy is 72 months on every lease we have.

On this chart I figured 25 per cent net earnings from the gross. I could not name any other business, out-

(Testimony of Don G. Westbrook)

door advertising or otherwise, that made that much. I don't think 25 per cent is just a little speculative and guess. In my line of business I know that whether we make a gross profit or a loss is always a matter of speculation until we balance the books at the end of the year. I know that many factors enter into the thing and that many companies well-managed have shown a loss when they have had their largest incomes. I took this 25 per cent because we have our records and our cost system. We know what it costs to build and what it costs to sell. We take into consideration the selling costs, the leasing costs and the operating costs, and by computing those we can estimate as to how much our net profits should be if we were left alone. I believe it would be safe to say that if Foster & Kleiser had not spent several millions of dollars interfering with competitors, as is shown by their records, that there were certain years during the period when they would have made 25 per cent net profit. I don't know of any company that has actually made 25 per cent from the outdoor advertising business. Most of the companies that are best established are members of the same association of which Foster & Kleiser are members, and they get the business through the Bureau in the same way. Assuming that they are all members of the same association as Foster & Kleiser, I do not know of any of them that have made 25 per cent. I did not say that I arrived at the conclusion that we should have made 25 per cent if we had not had any competition. We would not have cared if there had been. In figuring that we would make 25 per cent, I made no allowance for other companies coming into the field. If Foster & Kleiser had

(Testimony of Don G. Westbrook)

not prevented us from carrying on business as they had, a great number of other companies would have entered into the advertising business and, if they had entered, that would have given us just that many more sales connections and in other cities. Every time Foster & Kleiser bought out an advertising company that meant that we did not have sales connections in the city where that company operated. If other companies had come into the cities where Foster & Kleiser were doing business and had bought them out, we could have had them to represent us and made a profit on that business. Then, in turn, we could have sold for them in our territory and could have gotten a commission. It would have been a two-way proposition and with them coming in our profit should have been greater than if there were no competitor of any kind here on the Coast. We figured that if the illegal acts of Foster & Kleiser were removed that there would be other companies entering Oakland in the same territory that we were in, in competition with the Special Site Sign Company. I understand that if there were several companies operating in Oakland that they would necessarily be bidding for the leases that we wanted; that would not necessarily run up the cost of our leases. I would not say that the amount of outdoor advertising space to be had was limited. The conditions are changing constantly. The key locations, of course, on a certain street within a certain area are limited. Outside of that the locations are not limited.

If, in the City of Oakland, there were five additional outdoor advertising companies appeared and started to bid for locations, that would certainly increase rentals.

(Testimony of Don G. Westbrook)

I know that most of the large advertising is done through agencies. The outdoor advertising industry has from the very beginning been in competition with general forms of advertising. It is not true that just a certain percentage of the money spent on advertising goes into outdoor advertising. The amount of money that is spent on outdoor advertising depends a lot on the salesmanship of the people offering it.

During my experience in the business I never knew of a condition arising to the extent that the media of outdoor advertising was threatened with destruction from legislation and zoning ordinances and the advertisers threatening to abandon it entirely. I have heard something of it but that was a long time before my coming into this business. I do not know that certain of the large oil companies in this State, notably the Standard Oil Company, started doing their own outdoor advertising and putting signs along the highways to such a point that they had aroused the public resentment against them and a boycott of those companies. According to my information, the Standard Oil Company spent many thousands of dollars over a period of time in putting outdoor advertising out of business. They gave prizes to get people to send in stories and pictures depicting bad outdoor advertising. At the time the Standard Oil Company of California was doing that, the Standard Oil Company of New Jersey and other places was using outdoor advertising on the highways. After they had conducted that campaign for some time, they commenced using outdoor advertising and are using it today in spite of the fact that they spent many thousands of dollars fighting it a few

(Testimony of Don G. Westbrook)

years ago. Apparently they thought that campaign was not successful or they would not be buying it now. It did not seem to me that it hurt the outdoor advertising business a bit. It seemed to me it helped it.

I know that in 1928 the advertising business fell off throughout the United States and the percentage of moneys spent on outdoor advertising commenced to decline and has been steadily declining. I think that was generally the case but it did not apply to Special Site Sign Company. It is a fact that in 1928 the percentage of money spent on outdoor advertising was less than it had been in previous years. The entry of radio into the advertising field was a contributing factor in that decrease. I suppose it is a fact that these associations of which we complain that Foster & Kleiser belonged to, the Outdoor Advertising Association and the Poster Advertising Association, have been spending a great deal of money and effort to sell the media generally to advertisers. They say that they have for years been battling to increase the standard of regular outdoor advertising. I don't know that that is true for the last five years, I don't think so. The plaintiff is a member of the Independent Association to improve outdoor advertising. It is not a very active association at the present time. I have no direct information regarding it.

My company has made an effort to bring its facilities before advertisers to sell its service by direct sales efforts, calling upon accounts, interviewing advertisers and calling upon the agencies. We have sent a person to the East to contact large eastern advertisers and eastern agencies. We had a man by the name of Mayan in New York in

(Testimony of Don G. Westbrook)

1929, and a man by the name of Bender in Chicago in 1929. I don't know how long these men represented us or how active they were. I made an attempt to list our services with the Bureau in 1929. I gave them a list of the services that we could render in writing. I do not have a copy of it and can't produce it because I don't recall what it was.

I testified on my direct examination that leasemen were instructed to draw a comparison between the appearance of the competitors' boards and Foster & Kleiser's boards and use that as a means of possibly unsettling the lessor of the competitors' property. That means that I point out that Foster & Kleiser's men should consider the superiorities of their service and compare them with the possible inferiorities of the competitors' service. At certain times Foster & Kleiser's boards were superior and the service was superior to competitors.

REDIRECT EXAMINATION

BY MR. GLENSOR:

When Mr. Clark asked me what reasons I had for saying that the company should make a 25 per cent profit with fair competition and I stated that I gave no reasons for it, I must not clearly have understood the question. I have reasons as a basis for the opinion which I gave. This is the period from 1918 on when business generally was progressing in this country. The advertising business particularly was increasing by leaps and bounds. The sales of the outdoor advertising media generally had more than doubled in the United States, and as far as the Foster & Kleiser Company is concerned, I had access to some of

(Testimony of Don G. Westbrook)

their figures and during that period their sales had more than doubled, so there was one reason. Another reason was that if the Special Site Sign Company's employees had been permitted to spend their time on constructive work rather than mending fences and had the time to go out and sell instead of trying to protect themselves and their locations and had had time to keep their structures in good shape, that it would be comparatively easy to build up their sales without building up their expense. Their office and equipment and yard were large enough to have done many times the work that they have done without increasing the expense very much, and it would have been possible to have increased their income and their net profits without having increased their expenses in the same proportion. It is my opinion that the figures that I gave are conservative.

I was questioned to a considerable extent about a hypothetical location out on an open highway and whether that would be a key location and whether I could go down the road a half a mile and rent a location just as good. Assuming that I could go down and rent another location, it is a fact that the factor of moving an advertiser who is actually on the board which we have lost is a tremendous problem. It is also a factor in determining whether or not a location is a key location whether one of our advertising customers considers it a key location for his advertising purposes. One advertiser will not always consider a location a key location which another advertiser does. If he has been sold upon a series of bulletins or a showing of poster panels and has contracted for them and he loses one of those locations, it almost always causes a

(Testimony of Don G. Westbrook)

certain amount of trouble because we have got to resell him on a new location. He will use that as a basis of trying to work the price down and buy cheaper because he will say that he is dissatisfied with the new location.

I believe that I had been connected with the Special Site Sign Company a short time before the Coast Advertising Company went out of business. I had known that they were in competition both with Foster & Kleiser and the Special Site Sign Company. I understand they went into bankruptcy. During the short time that I was with the Special Site Sign Company before the Coast went into bankruptcy, I was in competition with them only indirectly. At that time they were getting into a pretty bad state financially and I did not have much competition with them.

I recall the testimony that has been given here about the National Outdoor Advertising Bureau being a collection of advertising agencies. I would say that those agencies are practically all of the big national agencies. The National Outdoor Advertising Bureau has Pacific Coast representation and if you wish to do business with it, you can try to do it with the San Francisco office.

I testified that with fair competition Special Site Sign Company could have made a 25 per cent profit. I recognize that they did not make 25 per cent. I have borne in mind the fact that as a result of this operation the Special Site Sign Company has been forced to sell in broken showings and in making a profit of 25 per cent, I have assumed that they would not have to continue to sell in broken showings but could retain their leases long

(Testimony of Don G. Westbrook)

enough to make up parcels of paint displays and showings for poster panels which would enable them to sell on schedule prices rather than on broken showing prices.

During the time that I have been with the Special Site Sign Company I have contacted many of their lessors. I have found that some of their current leases which they have not lost have been in effect for a great many years. I have come in contact with lessors whose property we have occupied for a period of eight, ten or fifteen years. It was from a survey of the whole business that I concluded that six years was a reasonable expectancy for the life of a lease without interference. To my knowledge the Special Site Sign Company did not maintain any systematic contact on the lessors of Foster & Kleiser nor did they keep any list or record of their locations. They never kept any list of the Coast locations when they were in business there. As far as I know we got along all right with them.

BY MR. CLARK:

After I had filed a list of the facilities of the Special Site Sign Company and other independent advertising companies with the National Outdoor Advertising Bureau, I followed that up by soliciting the Bureau to place business on the independent plants. I made calls upon them a great number of times at the San Francisco branch. I know that the Bureau says that it does not and never did select the plant upon which the business is placed. I don't believe it. I know as a matter of fact that if the business is put through the Bureau sometimes the advertiser selects the plant upon which the business is to be posted and sometimes the agency does.

Mr. Glensor thereupon offered in evidence 68 office record cards, as one exhibit. These office record cards were received in evidence and marked collectively Plaintiff's Exhibit 193. Said exhibit was thereupon read to the jury and is in words and figures as follows:

[PLAINTIFF'S EXHIBIT No. 193.]

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. HWY LEASE NO.

LOC. Foothill Blvd SL 1 Mi E Estudillo Ave
(San Leandro)

LEGAL

LOC.

LEGAL

OWNER M. S. DAVILLA
MR. COSTA

ADDRESS Box 14, Route 2, R. F. D.
Opp. Knox Ave. on E 14th St.

Date	Am't Offered	By	Contact Data	B2	4TA
------	-----------------	----	--------------	----	-----

Under lease to Special Site Sign
Co. @ \$50.00 yr S/A 5 years
from 1927.

- 11- 2-28 LG Could not give information on rental dates. Up 4-25-29
- 7- 1-29 RW Mr. Costa says S. S. S. has 5 yr lease on unit basis. No exclusive.
- 12-16-29 RW S. S. S. has good lease to 1932. Up 12-10-29
- 6-27-30 RW Lease still holds. Owner says O. K. Up 6-20-30
- 12-22-30 RW No change in condition. Up 12-10-30
- 6- 4-31 RW No change in conditions. Mont- gomery Ward copy obsolete Up 5-10-31
- 11- 4-31 Board still on property blank. Up 2-10-32
- 2-16-32 RW Structure still on property, blank. Up 8-10-32
- 9- 1-32 WAH Check at later date.
- 3- 1-34 EAD St. Marks Hotel advertised on bul- letin.

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO

13th & Alice NE 100x50
 LOC. ~~13th & Alice NE~~ (res) 75x25'
 LEGAL Blk 195 Lot + Kellersberger's Map of Oak-
 land Lot 1, 2 & So. 1/2 of Lot 28
 LOC.
 LEGAL
 OWNER LILLIAN & J. D. ISAACS
 ADDRESS c/o G. M. Richardson, Oakland Bank Bldg.
 ITA EXTRA TIGHT

Date	Am't Offered	By	Contact Data	A3
------	--------------	----	--------------	----

See former office record in file.

8- 6-28	WAH	Morris	in L. A. until about Aug 10th	
8-10-28	WAH	"	promises to see tenant personally and have signs removed. Says Sweeney refused to accept reg. letter requesting removal. See in about 2 weeks.	Up 9-25-28

Date	Am't Offered	By	Contact Data
4- 3-29	WAH	Morris	expects to lease for Auto Parking soon. Can do nothing while present tenant is in house. Up 6-10-29
6-15-29	WAH		Nothing can be done until more definite news of erection of P. Of- fice is obtained. Up 8-20-29
8-27-29	WAH	Mr & Mrs Morris	advise estate now being settled. When com- pleted, they will control. Want call later. Up 11-10-29
11-16-29	WAH	P. O.	going in across street. Want to await developments. Up 12-29-29
12-27-29	WAH		Unable to learn just when Gov't is to actually start erection of new Post-Office across street. Will con- sider no propositions at present. Up 1-28-30
2- 1-30	WAH	Morris	out of city for ten days. Up 2-17-30
2-27-30	WAH	Morris	in N. Y. for several weeks. Up 3-15-30
3-20-30	WAH		Still in N. Y. Up 4-10-30

- 5-22-30 JHB Morris very friendly but does not want to give us adv. privileges over tenant's head. Very anxious to tear building down if he can get something on lot to even pay the taxes. Up 8-10-30
- 8-20-30 WAH Nothing can be done at present. Up 10-15-30
- 10-17-30 WAH Letter to S. F. requesting contact. Offering \$20.00 for 6 Sh \$60.00 for two posting panels. Up 11-20-30
- 10-31-30 WAH S. F. reports "situation remains exactly as outlined in letter. However, Morris very friendly to us & assures that before they ever do anything re. leasing for adv. we are to have first opportunity to lease." Up 1-16-31
- 1- 7-31 WAH S. F. advises no progress can be made with Morris' until present tenancy changes. Up 1-13-31
- 3-19-31 RNC Tenant here says no adv. to be allowed on property. 6 sheets there now to be removed. Up 5-20-31
- 6-18-31 WAH O. K. to pass contact. Up 9-4-31
SEE NEW CARD

[Crest]
Foster and Kleiser
COMPANY

CITY	Oakland	CLASS	HWY	LEASE NO
LOC	San Pablo & Santa Fe R. R. Crossing SW			
LEGAL	Lot 2, Block 4, Alta Punta Tract			
LOC.				
LEGAL				
OWNER	STEGE FLORAL CO.			
ADDRESS	R. F. D. #1, Box 32-B, Berkeley.			

		Am't			
Date	Offered	By	Contact Data	B2	4TA
			Under lease to Special Site Sign Co. 10 yrs from Aug. 1924 @ \$15.00		
11-	6-28	RW	Property occupied by Jap Nursery. Tenant doesn't speak English. Get ownership.		Up 2-12-29
	6-18-29	RW	Owner says S. S. S. has 5 more years at \$15.00.		Up 12-10-29
	12-16-29	RW	S. S. S. have good lease		Up 7-20-30
	7-23-30	RW	Lease still holds.		Up 2-20-31
	2-19-31	RW	Rent paid to Aug. 1931.		Up 8-10-31
	9-17-31	RW	Another year's rent paid. Situation same.		Up 3-17-32
	3-22-32	RW	Structure still on property.		Up 11-1-32
	11-10-32	WAH	Check at later date.		
	3- 1-34	EAD	Structure advertises Drake Hotel.		

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. E 14th & 89th NW 40x100

LEGAL Lot 27, Blk 4579 in Madison Square

LOC.

LEGAL

OWNER JUNIOR MONARCH HAY PRESS CO.

ADDRESS San Leandro

Date	Am't Offered	By	Contact Data	B2	2TA
			Under Lease to Special Site Sign Co.		
1-10-29		ED	Mr. Holmes, bldg. inspector, said sign will be removed. Sign built con(-trary to City Ordinance)		
1-17-29		ED	Spl Site has been given notice to remove sign.		
3-20-29		HHW	Bldg Inspector advises structure must be removed.	Up 5-1-29	
6-15-29		ED	C. J. Heinemann, Bldg Inspector, said Mr. Holmes will return to office.	Up 6-19-29	
6-19-29		ED	Mr. Holmes, Bldg. Inspector, advises structures will be removed, after		

7-10-29	ED	Mr. Holmes will take it up with the Commissioners. Up 8-30-29
9- 5-29	WAH	G. A. H. has matter under discussion with Holmes of City Permit Dept.; allow to pend for time being. Up 9-30-29
10- 8-29	WAH	Structure still there. Nothing has been done by City Inspector as yet. Up 12-15-29
12-21-29	WAH	No change as yet. Up 2-5-30
2-24-30	WAH	Nothing new on this; same situation. Up 7-5-30
7- 7-30	WAH	Same conditions. Nothing new. Up 11-1-30
11-13-30	WAH	G. A. H. advises situation unchanged re, bldg dept. Up 3-10-31
3-13-31	WAH	No change on this. Structure still in front of house. Up 8-1-31 [Written in red]: 1143-69#5

Am't			
Date	Offered	By	Contact Data
8-17-31	WAH	O. K. to pass contact.	Up 2-15-32
2-18-32	WAH	Situation unchanged at this time.	Up 8-1-32
8-24-32	WAH	O K to pass contact.	Up 4-1-33
4-17-33	WAH	Check at later date.	

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS HWY LEASE NO.

100

LOC. San Pablo WL $\mp\frac{7}{5}\theta'$ N Plumas (El Cerrito)
 LEGAL Lots 27 & 28 Block 40 Richmond Annex
 LOC.
 LEGAL
 OWNER C. H. & MARY MEYERS
 ADDRESS 818 Pomona Ave. Berkeley

Am't				
Date	Offered	By	Contact Data	B2 4TA
			Under lease to Special Site Sign Co.	
11- 6-28		LG	Check ownership in Richmond.	Up 2-10-29
12- 5-29		RW	S. S. S. delinquent in rent.	Up 1-20-30
1-28-30		RW	Location undesirable acct obstructed by several small signs on the North.	Up 8-20-30
8-25-30		RW	Obsolete copy of Kleiber still on bd. Undesirable location.	Up 1-10-31
2-19-31		RW	S. S. S. Hwy still on property.	Up 8-10-31
9-17-31		RW	This board bears new copy of Oakland Hotel. Rent paid O K	Up 1-15-32
2- 2-32		RW	Situation same.	

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

 LOC. (a) West 14th Ext. to S. P. Mole & R R
 Crossing NW Cor.

LEGAL

 LOC. (b) West 14th Ext. to S. P. Mole & R. R.
 Crossing SW Cor.

LEGAL

OWNER SOUTHERN PACIFIC COMPANY

ADDRESS 5th & Kirkham, Oakland

		Am't		
Date	Offered	By	Contact Data	A2 4TA

Under lease to Special Site Sign
Co. NL from March 1929

4-15-29	HHW	West 14th St. extension property owned by S. P. was offered to us sometime ago (first of yr). In consultation with G. A. H. who advised not as yet desirable and not to lease any unless we could secure exclusive. S. P. would not give exclusive.	Up 8-15-29
---------	-----	---	------------

- 8-21-29 WAH Conditions unchanged here.
- 12- 2-29 WAH Situation same.
- 12-18-30 WAH Special Site have recently added one Unill B P to the (a) location and one to the (b). We are leasing frontages on both sides of the 14th Street extension (Lease #3847) immediately West of these two locations. Impossible to get exclusive from S. P. R. R.
- Up 3-7-31
- 3- 2-31 WAH Same situation prevailing.
- Up 9-10-31
- 9-10-31 WAH O. K. to pass contact. Up 2-10-32
- 2-18-32 WAH Check at later date.

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. E 14th & 106th SW 100x100

LEGAL

LOC.

LEGAL

OWNER JOE PALANGE

ADDRESS 10626 E 14th St.

	Am't			
Date	Offered	By	Contact Data B2	4TA

Under lease to Special Site Sign Co. Mo to Mo. @ \$120.00 yr 12/Ann See filled office record card in file.

1- 7-29	WAH	Minney	advises Palange has full say now and all pending deals are off.	
---------	-----	--------	---	--

1-10-29	WAH	J. A. Palange	advises he may consider leasing his 50' corner to us in 3-4 months. Inside 50' (upon which S. S. S. are built) is owned by son now in N. Y. until 6-1-29. Receiving \$10.00 mo. on month to month basis. No lease.	
---------	-----	---------------	--	--

- 4- 2-29 WAH Minney now has new long term option on this and Palange will not consider at present.
Up 7-1-29
- 6-29-29 JHB S. S. S. Co. has removed pilasters, lights and panels of bulletin but he will know status after first of month if rent is not paid.
Up 7-10-29
- 8- 1-29 JHB S. S. S. Co has built new paint bulletins and resumed payment of rental.
- 12-13-29 JHB Rental being paid regularly.
Up 12-15-29
- 4-19-30 JHB Rental being paid O. K.
Up 4-13-30
- 11-18-30 JHB Rental OK according to Palange
Up 10-13-30
- 10-31-31 RNC Rental O. K. Up 5-1-31
- 5- 1-32 WAH Check at later date. Up 12-1-32

[On back]:

	Am't		
Date	Offered	By	Contact Data
12-14-32		WAH	Check at a later date.
6-18-34		WAH	Situation unchanged. Check at a later date. Up 12-10-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR ASSIGNED TO
LEASE NO.

LOC San Pablo EL 55.6' S 26th 55.6'
LEGAL Lot 3, Block J, Kelsey Tract
LOC.
LEGAL

OWNER O. H. NOBLE
BANK OF AMERICA N. T. S. A.
ADDRESS ~~Hotel Alameda, Alameda, Calif.~~
% O H Noble, 1338 Park St. Alameda

	Am't			
Date	Offered	By	Contact Data B4	1TA
			Under lease to Special Site Sign Co. 1 year from 11-1-27 @ \$48.00 yr.	
3-26-29		HHW	Lease recorded by King of S. S. S. Co. Calls for 1 yr from 11-1-27 and for priv. of using for a succeeding five years	
4-19-29		WAH	No new developments on sale of property.	Up 7-1-29

7- 1-29	RGB	S S S Co. lease still in force. No change in any way.	Up 9-15-29
9-10-29	RGB	No change.	Up 11-26-29
12- 3-29	WAH	Situation same. S. S. S. still have under lease.	Up 2-14-30
2-27-30	RGB	No change. S. S. S. still have good lease. S. S. S. Co. lease still in force. Has over 3 years to run.	Up 5-10-30
5-13-30	RGB	No change. S. S. S. Co. still here.	Up 7-28-30
8-11-30	RGB	Noble says no change. Still under lease to Special Site.	Up 10-28-30
11- 5-30	WAH	Conditions unchanged.	Up 1-10-31
1-17-31	RGB	Same owner. No change.	Up 4-2-31
4-14-31	RGB	S. S. S. still control. Same owner.	Up 6-2-31
11-19-31	RNC	S. S. S. still operating here.	Up 2-5-32
2-12-32	RNC	S. S. S. still control this.	Up 5-1-32
5-10-32	RNC	No change. Special site still here.	Up 7-14-32
1- 1-33	RNC	S. S. S. still control this.	Up 12-1-32

[On back]:

Date	Am't Offered	By	Contact Data
			Up 4-25-33
2-20-33	NEB	Thos Bros	report sale of property to Bank of America N. T. S. A.
3- 3-33	WAH	Check at later date.	Up 7-1-33
7-13-33	RNC	S. S. S. still operating	on this wall. Up 10-2-33 Up 12-17-33 Up 4-10-34
4-16-34	WAH	O K to pass contact.	Up 7-20-34 Up 10-20-34
11- 9-34	RNC	Special Site still operating	here. Up 1-20-35

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. ROOF LEASE NO.

LOC. Franklin & 15th NW 100x100 - Roof

LEGAL No tract title (metes & bounds) Franklin &
15th St. NW 100x100

LOC.

LEGAL OWL REALTY COMPANY

OWNER ~~ALAMEDA INVESTMENT COMPANY~~
~~OWL DRUG COMPANY~~Maiden & Rittigstein (Mr. E. Thompson,
Agent)

611 Mission Street, San Francisco

ADDRESS

Am't				
Date	Offered	By	Contact Data B4	ITA
5-26-27		BFC	Property leased for 99 years to Owl Drug Co. Lease was apparently given by J. W. Porter, Owl Drug Co. 611 Mission St. San Francisco	
7-15-27		BFC	The Oakland Display Co. has lease which expires in April 1928. At that time the Owl Drug must either add additional stores to the present building or buy. Porter will not give new lease until he has given us chance.	

6-17-29	WAH	O. K. to pass contact here.	Up 10-10-29
10- 9-29	WAH	Do not want now.	Up 1-26-30
2-27-30	WAH	Having difficulty tracing Owl Realty Company.	
3-25-30	WAH	Bring up.	Up 8-8-30
8-15-30	WAH	Do not need now.	Up 1-10-31
11-30-30	WAH	Under lease to Special Site Sign Co. Month to month and high rental. 2 Unill B P panels erected. A location which we could have had under these conditions but refused to accept.	
1-31-31	WAH	Under lease to Special Site. One panel Illum now. Report should now read 1 Illum B P and one Unill B P. Same situation.	Up 4-10-31
4-15-31	WAH	Still being used by S. S. S. Co.	Up 7-1-31
7-13-31	WAH	O. K. to pass contact.	Up 10-27-31
11- 5-31	WAH	Same situation.	Up 1-20-32
1-21-32	WAH	Check this at later date.	Up 4-21-32
4-26-32	WAH	O. K. to pass contact (h)	Up 8-10-32 Up 2-10-33
12-13-32	WAH	Check at later date.	Up 12-1-33 Up 4-10-34
4-16-34	WAH	O. K. to pass contact.	Up 7-20-34 Up 10-20-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. 7th SL 75' W Castro 25'

LEGAL Lot 14 Block 70 Kellersbergers Map of
Oakland

LOC.

LEGAL

OWNER JOHN P PETERS & D B GOMES
ADDRESS 701 - 7th St. Oakland

Date	Am't Offered	By	Contact Data	B4	3TA
------	--------------	----	--------------	----	-----

Under lease to Special Site Sign
Co. 5 yrs from 11-26-27 @
\$20.- yr.

12-14-27 JHB Mr. Peters just received check for
next yr's rental in advance.

7-14-28 JHB Peters says rental paid until Jan.
& everything satisfactory.

- 10-31-28 JHB Rental paid to Jan. 1929
- 1-16-29 JHB Peters rental is being paid regularly. Up 4-1-29
- 3-26-29 HHW Lease recorded by King 10-14-27. Up 7-10-29
- 7-24-29 JHB Peters says rental coming in O. K. Up 11-15-2
- 11-14-29 JHB Satisfied with present arrangements. Rental is O. K. Up 2-1-30
- 2-25-30 JHB Rental paid O. K. Peters and Gomez advise there are no changes in ownership. Up 8-15-30
- 8-21-30 JHB Rental O. K. Up 1-1-31
- 1- 6-31 JHB No change here; rent O. K. Up 6-1-31
- 5-26-31 WAH O. K. to pass contact. Up 11-20-31
- 11-25-31 WAH O. K. to pass contact. Up 5-5-32
- 5-19-32 WAH Check at later date.

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. San Pablo EL 160' N 66th 40'
 LEGAL Por lots 6 & 7, Block 1454 Michel Tract
 LOC.
 LEGAL

OWNER HUGO, MICHEL (etal)
 ADDRESS 1305 - 66th St. Oakland

	Am't			
Date	Offered	By	Contact Data	B4 4TA

Under lease to Special Site Sign
 Co. 5 yrs from 7-15-27 @ \$25.00
 yr S/A

8-27-27	WAH	Barrels piled behind this panel and on sides. Undesirable as condi- tions necessitate building flat.
2- 1-28	HHW	Special Site Sign Company have good lease.

- 3-24-28 HHW S. S. S. Co. have added additional panel.
- 2-12-29 WAH Michel receiving rental. Good lease. Well satisfied. Up 6-1-29
- 3-26-29 HHW Lease recorded 10-14-27. Calls for 30' on south of Bldg at 6630 San Pablo and 60' on North side of same bldg for 10 years.
Up 6-1-29
- 8- 6-29 WAH No change in present status; let ride. Up 11-5-29
- 12- 2-29 WAH Same situation here. Good lease. Up 8-5-30
- 8-20-30 RGB No change. S. S. S. still here with good lease. Same ownership. Up 2-20-31
- 2-21-31 RGB S. S. S. Co. still here. Up 7-18-31
- 7-24-31 WAH O K to pass contact. Up 3-1-32
- 3-12-32 WAH Structures still being maintained on same. basis. Up 11-1-32
- 11-10-32 WAH Check at later date.
- 6-18-34 WAH Situation unchanged. Check at later date. Up 12-10-34

[Crest]
Foster and Kleiser
COMPANY

CITY Oakland CLASS. HWY LEASE NO.

LOC. E 14th & Santa Paula SW

LEGAL

LOC.

LEGAL

OWNER PEDRO GONZALES

ADDRESS Premises

		Am't			
Date	Offered	By	Contact	Data	B2 4TA
			Under lease to Special Site Sign Co. 10-12-30 @ -----		
7-	9-31	RGW	Former lease with S S S 5 yrs from 10-12-26 @ \$25.00 yr re-instated and structure rebuilt. Up 10-17-31		
11-	3-31	RW	Board carries copy of San Leandro Mill & Lumber Co. Up 3-20-32		
6-	22-32	RW	No change in situation. Up 12-20-32 Up 10-1-33 Up 9-1-34		
9-	13-34	WAH	Check at later date.		

[Crest]
Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. Foothill Blvd & 68th NW 100'

LEGAL

LOC.

LEGAL

OWNER EVERGREEN CEMETERY ASS'N.

ADDRESS 3110 Havenscourt.

Am't				
Date	Offered	By	Contact Data	B4 4TA
			Under lease to Spec. Site Sign Co. 5 yrs from 3-15-27 @ \$32.- yr. Ann.	
3-25-29		JHB	Mr. Bush, Mgr. says S. S. S. has had lease for past two years but previously had only target signs on here. Rental always paid promptly and year in advance. Up 9-25-29	
9-21-29		JHB	Rental is being paid regularly. Bush satisfied with present ar- rangements. Up 3-30-30	
4-28-30		JHB	Rental coming in O. K. Bush advises. Up 10-25-30	
11-25-30		RNC	Bush advises rental O. K. No change here. Up 5-1-31	
12- 3-31		RNC	Rental paid in advance here until March, 1932 Up 2-17-32	
2-18-32		WAH	Check at later date.	
6-18-34		WAH	Situation unchanged. Check at later date. Up 12-10-34	

[Crest]
Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. College & Manila SE \approx 58.16x88
LEGAL Lots 39 and 40, Block J, Broadway Terrace
LOC.
LEGAL

OWNER H. WINDMULLER
ADDRESS 5383 College Ave., Oakland

Am't				
Date	Offered	By	Contact Data B4	ITA
			Under lease to Special Site Sign Co. 10 yrs from 6-14-27 @ \$12.00 yr Ann.	
12- 2-27		HHW	Went over lease with Mr. Windmuller who was of the opinion this was for one year only and is put out over this. Also lease to start when board is erected and this was in November.	
6- 3-29		ED	Mr. Windmuller has deal on for sale.	Up 7-1-29

- 7- 3-29 ED Deal for sale is off. King has a
good lease. Up ~~9-20-29~~
- 9- 3-29 ED Mr. Windmuller will see his at-
torney. Up 9-2-29
- 11- 4-29 ED Special Site Co. lease is for ten
years. Up 11-20-29
Up 1-15-30
- 1-15-30 ED Said he may build on lot.
Up 3-1-30
- 3- 2-30 ED Mr. Windmuller will see his attor-
ney in regards to having sign re-
moved. Up 5-25-30
- 6- 2-30 JHB Windmuller rec'd rent O.K. Not
going to build. No changes con-
templated. Wants to sell property
to gas company. Up 7-15-30
- 9- 2-30 JHB No change in this situation.
Up 11-2-30
- 11-18-30 JHB Trying to lease corner for gas
station. Up 2-1-31
- 2-18-31 JHB No change. Rental O. K.
Up 5-1-31
- 5-20-31 ED Rent paid to Nov. 30, 1931.
Up 8-10-31
- 8-27-31 WAH O K to pass contact. Up 11-2-31

Date	Am't Offered	By	Contact Data
11-20-31	WAH	O. K. to pass contact.	Up 2-5-32
2-18-32	WAH	O. K. to pass contact.	G. A. H. Up 5-4-32
5-19-32	WAH	No change in this situation.	Up 8-9-32 Up 2-10-33 H. Up 7-5-33
7-15-33	WAH	Contact within 60 days.	Up 9-15-33 Up 12-10-33
1-12-34	WAH	Special Site still maintaining flat panel under original lease.	Up 4-10-34
4-16-34	WAH	O. K. to pass contact.	Up 8-1-34
8-14-34	WAH	Special Site still maintaining flat panel.	Up 11-10-34
11-22-34	WAH	S. S. S. Co. still here.	Up 2-10-35

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. E 14th SL 53' W Seminary 75'
 LEGAL Block 2, Lot 3 & por 4, Eastlawn Tract
 LOC.
 LEGAL

OWNER ELLEN NANN
 JAS. K. TAYLOR

ADDRESS ~~932~~ 37th Avenue

		Am't		
Date	Offered	By	Contact Data B2	3TA
			Under lease to Special Site Sign; No lease @ \$120.00 yr	
6-17-29	WAH	G.A.H.	advises to pass contact.	Up 10-1-29
10-31-29	RGB	Mrs. Mann	satisfied with present agreement. One 12½x47' Illum. City Bu. animated, built on this location. Painted to W. P. Fuller Co.	Up 2-15-30 Up 2-15-30
2-20-30	RGB	Same conditions;	S. S. S. board still here.	Up 6-25-30

7-16-30	RGB	S. S. S. still has Fuller board here. Contract has sometime to run. Paid to latter part of year. Up 11-26-30
12- 1-30	RGB	Conditions unchanged. S. S. S. Co. still have lease. Up 5-20-31
4-16-31	RNC	S. S. S. still operating here. Up 7-20-31
9-14-31	RNC	S. S. S. Co. still operating here. Up. 12-15-31
12-14-31	RNC	S. S. S. operating here. Conditions unchanged. Up 3-10-32
3-10-32	WAH	O. K. to pass contact. Up 10-1-32
8- 5-32	NEB	Thos Bros report sale of property to Jas. K Taylor
8-16-32	WAH	S. S. S. to continue on same basis. Up 2-26-33
12-30-32	EAD	Two Unillum. panels of posting erected here to replace the City Bulletin Up 8-26-33
2-28-33	EAD	One panel of posting converted to an Unillum. City Bu. Up 8-26-33

[On back] :

Am't			
Date	Offered	By	Contact Data
			Up 3-1-34
6-18-34		WAH	Situation unchanged. Check at later date. Up 12-10-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. HWY LEASE NO.

LOC. San Pablo & Stockton NE (El Cerrito)
75x100

LEGAL Lots 8-9-10- Block 39, Boulevard Gardens

LOC.

LEGAL

OWNER J. J. MC CLIMANS

ADDRESS 2111 Bermuda St., Long Beach

Date	Am't Offered	By	Contact Data	B2	4TA
			Under lease to Special Site Sign Co.		
11- 6-28		LG	Secure information on ownership from El Cerrito City Hall.		Up 1-20-29
5-31-29		RW	Letter to Long Beach office requesting contact.		Up 6-25-29
7-18-29		RLB	Another letter to Long Beach requesting report of progress.		Up 8-18-29

8- 1-29	RW	Letter from Long B. promising contact as soon as possible - owner at home only at night. Up 9-3-29
9- 3-29	RW	Bring up. Up 10-3-29
9-25-29	RW	Leased to S. S. S. Co. - 5 yrs from 12-31-27 @ \$36.00. Rent paid to 1-1-30. Lessee may terminate lease if rental delinquent 30 days. Up 1-15-30
1-27-30	RW	Bring up Up 2-20-30
3-20-30	RW	S. S. S. have good lease 1932. Up 10-20-30
10-27-30	RW	No change in situation. Up 1-20-31
2-19-31	RW	Bring up. Up 7-20-31
9-21-31	RW	Lease still effective. Structure still on property. Up 12-15-31
12-19-31	RW	Condition unchanged.
7-21-32	RW	Condition unchanged. Up 5-20-33
6-30-33	WAH	Structures removed. CANCEL [Written in ink]: WAH

[Stamped on face]: DUPLICATE

[Stamped on face]: CANCELLED

[Crest]

Foster and Kleiser
COMPANY

LOCATION Hopkins NL 140.01' W. Dimond Ave. 93'

LEGAL B lettered A Dimond Tract L 2 & 3

OWNER

OR

TENANT E. LAIRD

ADDRESS ~~1206 Broadway~~ 1450 Harrison St.

AGENT

LEASE NO. 2553

CITY Oakland

CLASS SUR

PHONE

	Amt.		
Date	Offered	By	Remarks
12-15-26		WH	10 yrs. from 12-13-26 @ \$200.00 yr. 4/A Form A-1 (scratched) from E. Laird Up 8-15-27
9- 1-27		HHW	Bring up Up 12-1-27

1670

- 12-15-27 HHW “ ~~Up 2-15-28~~
- 7-24-28 JHB Endeavoring to reduce rental.
Slow progress. Working in connection with E. 12th & 44th SW.
Up 9-1-28
- 10- 5-28 JHB Mr. H. will not consider reducing rental.
- 5-12-30 WAH Hold rental. Issued order to T. D. structures account obstructing miniature golf course here.
- 6-20-30 WAH Cancel - Make unsecured card. ✓
Bill for refund from date of take down.
Up 7-15-30

[Written in ink]: WAH H

[Stamped on face]: Structures Removed—Check for Rebuild or Cancellation

[Stamped on face]: CANCELLED

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. Hopkins NL 140.01 W Dimond Ave 93

LEGAL Block A Dimond Tract Lot 2 & 3

LOC.

LEGAL

OWNER ~~E. LAIRD~~

~~E. LAIRD~~

THE HUTCHINSON COMPANY

ADDRESS ~~1450 Harrison St.~~

~~3009 - 17th Street, Oakland, California~~

Am't

Date Offered By Contact Data ~~C3 B3 B4 ITA 2TA~~

Formerly under lease No. 2553 -
10 Yrs from 12-13-26 at \$200.00
Yr. 4/A Form A1 (Scratched)
from E. Laird.

8-28-30 WAH Golf Course operating here.
Up 12-20-30

12-22-30 RNC Golf course discontinued here.
Now in hands of receivers. See
owner. Up 2-25-31

- 1-29-31 WAH Hutchinson Co. giving new lease
to another party for golf course
purposes in Spring. Up 5-1-31
- 6-24-31 RNC Fitz handling this property; ad-
vises not sure what is going to
happen here; expect to sell.
Up 9-20-31
- 9-24-31 RNC Fitz advises they are trying to sell
this piece. Up 12-20-31
- 10-28-31 RNC Fitz has taken this up with owners
who feel they should get at least
7.50 for first 6 mos. Then 10.00
per mo. thereafter.
- 11-13-31 RNC Offered 100.00 flat here. Fitz will
take up with owners Up 11-26-31
- 12- 7-31 RNC Fitz wants more time to talk over
with owners. Up 12-15-31
- 2-10-32 RNC Fitz advises expects this property
to be sold shortly. Up 3-1-32
- 4-22-32 RNC Fitz advises endeavoring to lease
for flower stand. or lunch wagon.
We to use remaining space.
Up 5-22-32
- 6-13-32 RNC Fitz will write agreement and sub-
mit. Up 7-1-32

[On back]:

Date	Am't Offered	By	Contact Data
7-11-32	\$50.	RNC	Fitz holding out for \$100.00 per year. This too high. Up 10-1-32
10-31-32		WAH	Special Site are constructing 2 Illum B P on this property as of today. Up. 4-1-33
11- 7-32		RNC	Fitz advises Special Site have taken five year lease effective Nov. 1st at an annual rental considerably in excess of \$100.00.
2-10-33		WAH	Check at later date. Up 2-1-33 Up 7-1-33
6-29-33		RNC	Special Site maintaining 3 Ill B P here. Rental paid O. K. Up 9-17-33 Up 12-10-33
12-15-33		RNC	S. S. S. still operating here. Up 3-1-34
3-26-34		RNC	Theil advises rental being paid on this. Lease has several years to run. Up 6-17-34
6- 6-34		NEB	Thos Bros report sale to the Hutchinson Company

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR ASSIGNED TO
LEASE NO.

LOC. Franklin WL 126 N 19th 133
LEGAL Block F, Lots 6, 7, & 8 in Fountain Place
LOC. Franklin WL 126' S 20th 133'
LEGAL Lot 8 and the S. 40' lot 7, Block F in Fountain
Place

OWNER WARNER BROS DOWNTOWN
THEATRE CORP.

ADDRESS Los Angeles, California
(C/o B H Cohn, 6425 Hollywood Blvd,
Hollywood, California.

Date	Am't Offered	By	Contact Data	B4	ITA
2-16-31		NEB	See filled office record card for old data.		
2-16-31		WAH	No report from L A as yet; however, learn theatre may start soon and will cover entire property.		

Up 4-20-31

- 4-23-31 WAH Auto Laundry advises S. S. S. in arrears in rental; will not advise term of S. S. S. lease.
Up 6-10-31
- 7-21-31 WAH O.K. to pass contact. Up 10-9-31
- 10-24-31 WAH Situation unchanged. Prentice of Auto Laundry advises rental being paid regularly. Up 12-10-31
- 1-15-32 WAH No change on this location.
Up 3-10-32
- 3-12-32 WAH Deal for theatre construction indefinitely abandoned. Calif. Auto Laundry continuing with S. S. S. Co. on original lease. Up 6-1-32
- 6- 8-32 WAH O.K. to pass contact. Up 7-10-32
- 8-19-32 WAH Contacted Mr. Lou Halper, exec Vice Pres and General Mgr. of Warner Bros Theatre Inc. at their Hollywood office. Advises receivership of Calif. Auto Laundry and pending litigation which comes to trial 9-12-32 will have definite bearing on their policy with reference to future use of property for outdoor advertising. Mr. Blount is their district representative.
Up 9-1-32

[On back]:

Date	Am't Offered	By	Contact Data
12-28-32	WAH	Our offer of \$100.00 per month and our present Lease #4119 maintaining 6 Ill B P and also roof of Parrish Garage Bldg. was eventually rejected by Mr. Blount of Warner Bros.	Up 3-1-33 Up 8-1-33 Up 11-1-33 Up 2-15-34
2-21-34	WAH	Same situation prevailing. Additional panels added.	Up 3-10-34
3- 9-34	WAH	Blount advises S. S. S. Co paying \$150.00 per month for this and Broadway frontage.	Up 6-1-34
6- 8-34	WAH	O. K. to pass contact.	Up 9-20-34 Up 2-1-35

[Crest]

Foster and Kleiser
COMPANY

 CITY Oakland CLASS SUR LEASE NO.
Loc. Franklin WL 186' N. 19th ~~129~~' 133'

LEGAL Block F Lots 6-7-8 in Fountain Place

LOC.

LEGAL

 OWNER OAKLAND TITLE INS. & GUARAN-
TEE CO.

 Tenant: Auto Wash Ldy. (Mr. Brian)
 WARNER BROS. DOWNTOWN
 THEATRE CORPN.
ADDRESS ~~Franklin &~~ 15th

 EXTRA TIGHT

	Am't				
Date	Offered	By	Contact	Data	ITA
				€3 B4	

7-10-28	JHB	Mr. Steinbach of O. T. I. & G. Co. advises that Mr. Walter Brian of 38 Bonita Ave. Pied. is the Pres. of company which is putting service station on this prop. In contact do not mention Mr. Steinbach's name.
---------	-----	---

7-25-28	JHB	Call home after 6:30 P. M. or business phone Sutter 6994, Home-Pied. 2559J
---------	-----	--

- 7-27-28 JHB Several calls and phone calls.
Left word to call HHW
- 7-28-28 HHW Brian has lease on this and
Broadway EL 166' S. 20th 93'
for approx. 5 yrs. Offers aprox.
350' space on SL of property
which runs through to Franklin
and Broadway and approx. 150'
on NL of prop. Requests quota-
tion and call in few days.
- 7-30-28 HHW Brian out of town for few days.
- 8- 6-28 50.- HHW Brian will advise.
- 8-17-28 HHW " is going to have their own
sign erected here. Up 10-5-28
- 10- 2-28 HHW Own sign erected. No more space
of any value. Up 12-10-28
- 12- 9-28 HHW New sign arrangement on prop-
erty. Quoted \$20.00 mo. for suf-
ficient space on Broadway to ac-
comodate painted bulletin. Will
do nothing at present.
Up 2-20-29
- 2-21-29 HHW Space now only good for 6 sheets.
Quoted Brian 1 pr. passes weekly
for 2-6 sheets and 1-3 sheet. Was
agreeable but have decided to keep
free and clear of all adv. but their
own. Up 5-20-29

[On back]:

Am't			
Date	Offered	By	Contact Data
5-22-29	HHW		No change. Up 8-10-29
8-22-29	JHB		For information see unsecured card "Broadway EL 166' S 20th 93'" which advises that Brian cannot sub-lease to anyone for any purpose. Up 11-6-29
11- 2-29	JHB		Brian wants all space on Franklin open. Up 1-20-30
1- 2-30	WAH		See unsecured card for Franklin and 20th SW for letter to Los Angeles regarding this property. Up 2-8-30
2-25-30	SW		Thos. Bros. report property sold to Warner Bros. Downtown Theatre Corpn.
2-25-30	WAH		Another letter to L.A. req. information in this connection. Up 3-15-30
2-28-30	WAH		L. A. advises nothing definite to report as yet. Up 3-28-30
3-24-30	WAH		L. A. reports: "We are unable to secure a lease for you on above described locations for reason that Warner Bros. are planning erection of a bldg. at a very early date." Up 6-10-30
6-18-30	WAH		L. A. reports Warner Theatre to start within 30-40 days. Up 8-15-30

- 8-20-30 WAH Letter to L. A. requesting Mr. Evans again be interviewed.
Up 9-5-30
- 9-10-30 WAH Letter from L. A. advising plans have not fallen through - temporarily delayed. Expect to commence construction as soon as possible.
Up 11-10-30
- 11- 7-30 WAH Special Site bldg here. Made deal with tenant to maintain priv work in exchange for several panels.
- 11- 7-30 WAH Letter to L. A. req. immediate contact to determine tenant's authority to sublease for adv- purposes.
Up 11-12-30
- 12- 1-30 WAH L. A. advises Auto Laundry tenant has made lease without Warner Bros knowledge or consent. Further advises tenants are only on mo to mo basis. They wish to check further into this situation before making decision.
Up 12-15-30
- 12- 9-30 WAH Special Site have erected 3 Unill B. P.
Up 12-15-30
- 12-17-30 WAH Another letter to L. A. req. report of progress particularly since our letter of Nov. 6th. Up 1-8-31
- 1-12-31 WAH No reply from L. A. to date.
Up 2-15-31

[Written in red ink]: See New Office Record Card

[Crest]

Foster and Kleiser
COMPANY

Adeline

LOCATION ~~San Pablo~~ (~~Adeline~~) WL. 50' S. San
Pablo ~~±~~ 36'

LEGAL Blk. 481 lot 6

OWNER

OR

TENANT ~~ELSIE LEESERING~~ (~~ESTATE~~) H. V.
BURKEADDRESS ~~± Terrace, Piedmont~~ 3741 Adeline St.,
Emeryville

AGENT

LEASE NO. 2719

CITY Emeryville

CLASS. SUR

PHONE

	Amt.			
Date	Offered	By	Remarks	Extra Tight
1-31-27		PWY	10 yrs. from 2-1-27 @ \$20.00 yr. S/A & 3x4' priv. Form A-1 (scratched) from H. V. Burke	

- 2-15-30 JHB Burke has moved. Returned check
for rent from 2-1-30 to 8-1-30.
- 3- 1-30 JHB Store still vacant. Owner out of
town.
- 4-28-30 JHB Agent of 3819 San Pablo will
write owner & advise results.
- 5- 1-30 JHB Make unsecured card, ✓ and can-
cel this card Up 5-10-30

[Written in ink]: WAH Up 6-15-30

[Stamped on face]: Structured Removed—Check for
Rebuild or Cancellation

[Stamped on face]: CANCELLED

[Crest]

Foster and Kleiser
COMPANY

CITY Emeryville CLASS. SUR LEASE NO.

[Written in red ink]: File under San Pablo

LOC. (a) Adeline WL 40 S San Pablo Ave 43
 LEGAL Northerly 43 feet of lot 7, Block 685, Map
 of Port. of Plot 6 in Kellersberger's Survey
 LOC. (b) Peralta EL 199.10 S. San Pablo ~~57-20~~
 54.05x50'
 LEGAL Por lots 5 & 6 (same legal as above)

OWNER FRED STOHR, etal
 ADDRESS 3819 San Pablo Ave. Oakland

Am't					
Date	Offered	By	Contact Data	B4	ITA
			Formerly under lease #2719 for 10 yrs from 2-1-27 at \$20.00 yr S/A Form A-1 (scratched) from H. V. Burke (& 3x4 priv)		
8-	5-30	JHB	Property rented by Auto Wreck- ing Company. Going to use yard for display purposes.		
8-	11-30	JHB	Radiator repair man says he has been talking to E. A. D. about small boards on property.		
10-	3-30	JHB	Place again rented to auto wreck- ing company.		
11-	15-30	WAH	S. S. S. have just erected panel here. Leased direct from owner. See owner for full particulars on his return to city. Up 11-20-30		

12-15-30 JHB Owner advises his mother leased this without his knowledge. Unable to ascertain what rental has been paid. However advises lease expires in March 1931. Requests us to call at that time.

12-30-30 JHB S. S. S. have erected 1 Illum B P on (a) and 2 Unill B P on (b).

2-24-31 JHB Rental O. K. on this.
Up 5-1-31

5-22-31 ED Mr. Stohr will return to Oakland.
Up 7-15-31

8-10-31 WAH O. K. to pass contact. Up 11-1-31

11- 1-31 EAD Mr. Stohr will return to Oakland.
Up 3-1-32

2- 1-32 EAD Called again. Mr. Stohr still out of town.
Up 3-1-32

[On back]:

Am't			
Date	Offered	By	Contact Data
3- 5-32		EAD	Mr. Stoer out of town. Will return. Up 4-20-32
4-25-32		EAD	Mother still away. Up 6-30-32
8-14-32		WAH	O K to pass contact. Up 11-1-32
5- 3-33		EAD	Fred Stoer said his mother signed lease for ten years with Special Site from 12-10-30. Up 10-1-33 Up 12-17-33

[Written in red on face]: Transferred to new card
1-10-33 NEB

[Crest]

Foster and Kleiser
COMPANY

CITY Emeryville	CLASS SUR	ASSIGNED TO LEASE NO.
-----------------	-----------	--------------------------

[Written in red ink]: File under San Pablo

LOC.	(a) Adeline WL 40' S San Pablo 43'
LEGAL	Northerly 43' lot 7 Block 685, Map No. 2 Watts Tract
LOC.	(b) Peralta EL 199.10 S San Pablo 54.05x50 (metes & bounds) Por lot 5 Map No. 2 Watts
LEGAL	Tract & Por lot 1 Map of Plat 6 Kellersber- ger's Survey of V & D Peralta Rancho

OWNER ELSIE LIESERING, EMMA R BAR-
HAM, F. J. STOER

CAROLINE HAMPEL, THERESA
SCHWARTZ, C/o Fred Stohr, 3819 San
Pablo Avenue, Oakland

ADDRESS

Am't						
Date	Offered	By	Contact Data	B4	ITA	4TA
See old card in trans. file.						
5- 3-33		EAD	Fred Stoer said his mother signed lease for ten years with Special Site Sign Company from 12-10-30.			
					Up	12-17-33
					Up	4-10-34
4-16-34		WAH	O. K. to pass contact.		Up	7-20-34
					Up	10-20-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO. 3044

LOC. E. 14th & 6th NW 150x150

LEGAL Blk 56, Lots 7-12 inc. Higley's Map of
Clinton

LOC.

LEGAL

OWNER H. M. BOYD & JAMES TARLTON

ADDRESS 544 E. 14th St. Oakland

Am't			
Date	Offered	By	Contact Data
3-17-27		WH	10 yrs from 3-18-27 @ 60.00 until built and 120.00 yr when built 12/A Form A-1 from H. M. Boyd & James Tarlton.
4- 4-27		WH	Owners have given option to Harms Realty Co. to buy property.
4-13-27		WH	H. W. Harms (1530 Franklin) Lake. 2018 or 9, says to hold this lease up. as planning on exercising option to buy and build immediately.
7-18-28		WAH	Boyd has purchased Tarlton's interest. Requested we suspend lease. Do not build. Letters outlining terms of suspension left with Boyd for signature. Agrees to mail them to office. Up 7-25-28

7-28-28 WAH Letters signed by Boyd and wife
 filed in lease envelope. Hold all
 rentals until further notice. Lease
 temporarily suspended.
 Up 12-1-28

12- 4-28 HHW Let ride. Lease still suspended
 Up 2-20-29

2-20-29 HHW No change. OK to let ride.
 Up 6-1-29

6-15-29 WAH Lease being suspended. Rental
 held. Nothing new on this.
 Up 10-11-29

10-10-29 WAH Conditions unchanged so far.
 Up 1-28-30

2-19-30 WAH Same situation; still under suspen-
 sion. Up 7-2-30

8-19-30 RGB Boyd in east, but wife says condi-
 tions same. Up 2-10-31

2-16-31 RGB Conditions unchanged; everything
 thing O. K. Up 6-1-31

4-12-31 RGB O. K. to give up; cannot build
 without cutting trees, etc. Letter
 [On back]:

Date	Am't Offered	By	Contact Data
			to owner on this. CANCEL and make unsecured card. WAH [Written in ink]: WAH
			[Stamped on card]: Structures Removed—Check for Rebuild or Cancellation
			Up 5-15-31 [Written in ink]: H

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. E 14th & 6th NW 150x~~75~~⁹ 140
 LEGAL Blk 56, Lots 7-12 inc. Higley's Map of Clinton
 LOC.
 LEGAL

OWNER H. M. BOYD & JAMES TARLTON
 H. M. BOYD & OLGA BOYD
 EMMA M. WILLIAMS

ADDRESS ~~544~~ E ~~14th~~ St. Oakland
 ~~544~~ E ~~14th~~ St. Oakland

	Am't					
Date	Offered	By	Contact	Data	B 3 A 7 B4	ITA

Formerly covered by Lease 3044 -
 10 yrs from 3-18-27 @ \$60.00 yr
 until built, \$120.00 when blt. 12/A
 Form A-1 from H. M. Boyd &
 James Tarlton - LEASE SUS-
 PENDED

7-28-31	WAH	O. K. to pass contact.	Up	10-14-31		
10-24-31	WAH	Not advisable to consider at this time.	Up	1-1-32		

3-14-32 RNC Boyd wants \$10.00 per month here. Has decided to build flower stand here. Up 6-1-32

6- 8-32 WAH O. K. to pass contact. Up 7-10-32

9-30-32 WAH Under lease to Special Site Sign Co. 1-12x25 Illum. Up 11-10-32
Post panel erected. Up 11-10-32
Up 2-10-33
Up 7-10-33
Up 10-1-33

8-10-33 NEB Thos Bros report location sold to Emma M. Williams

8-12-33 WAH Check this again in 45 days. Up 10-1-33

10-12-33 WAH Panel still here on same arrangement with new owner. Up 1-10-34
Up 4-10-34

4-16-34 WAH O. K. to pass contact. Up 7-20-34

Am't

Date Offered By

Contact Data

Up 10-20-34

11- 8-34 RNC Special Site maintaining two 12x25' Illuminated B P at this time. Up 1-26-35

[Crest]

Foster and Kleiser
COMPANY

LOCATION Piedmont Ave WL 310' N John St 80'
 LEGAL Lot 8 Blk 1116 L 6, 7, 8, 9
 OWNER H. C. PETERSON
 ADDRESS 4344 Howe St., Oakland
 AGENT
 LEASE No. 1884
 CITY OAKLAND
 CLASSIFICATION SUR
 PHONE

Amt.					
Date	Offered	By	Remarks		
10-16-23	30.00	EAD	Call again		
12- 3-23	60.00	EAD	Call 1-1-24		
1-15-24		EAD	Call about 2-20-24 - 3-31-24		
4-23-24	60-	LG	Call about 5-10-24	Up 5-15-24	
6- 7-24		ED	Deal on to sell	Up 8-7-24	
8- 9-24		WH	10 yrs. from 8-9-24 @ \$60.00 yr. 12/A Form B		
2-19-31		RNC	Peterson will consider additional panel here after he takes up cost of moving driveway with wife. Up 2-28-31		
5- 4-31		RNC	Peterson figures cost of moving driveway too expensive at present.		
6-20-32		RNC			

[Stamped in red across face of card]:

Transferred to new card 7-13-32 NEB

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR ASSIGNED TO
LEASE NO. 1884.

LOC. Piedmont Ave WL 274 N John 71'

LEGAL Northerly 11' of lot 6, entire lots 7 & 8,
Block L in Thermal Hill Tract

LOC.

LEGAL

OWNER H. C. PETERSEN

ADDRESS 4344 Howe Street, Oakland

	Am't		
Date	Offered	By	Contact Data
6-20-32		NEB	See trans. office record card for old data
*8- 9-24		WH	10 yrs from 8-9-24 @ \$60.00 yr 12/A Form B
2-19-31		RNC	Petersen will consider additional panel here after he takes up cost of moving driveway with wife.

Up 2-28-31

- 5- 4-31 RNC Petersen figures cost of moving driveway too expensive at present.
- 6-20-32 RNC Secured permission to remove one panel. New lease at \$30.00 yr. Promised Petersen if we wished to rebuild to two panels we would increase rental. New deal effective July 9. T. D. issued.
- *6-20-32 RNC 10 yrs from 7-9-32 @ \$30.00 yr S/A Form A-1 from H. C. Petersen owner (non-community) 1-C
- 8-29-34 RNC Cancellation secured effective 1-9-35. Cancel on that date. ·
Up 12-1-34
- 10-17-34 RNC Letter of cancellation secured effective 1-9-35. Bring up to issue T. D. Up 12-1-34

*These entries on card typewritten in red.

[Crest]

Foster and Kleiser
COMPANYCITY Oakland CLASS SUR ASSIGNED TO
LEASE NO.

LOC. Piedmont WL 319' N John 30'

LEGAL Northerly 21' lot 8 and Southerly 9' lot 9,
Block L in Thermal Hill Tract

LOC.

LEGAL

OWNER M. M. C. PETERSEN

ADDRESS 4344 Howe Street, Oakland, Calif.

Am't

Date	Offered	By	Contact Data	B4	1TA
1-15-34	WAH		Our lease on adjacent property from same owner improperly described and did not include this frontage, which is now under lease to Special Site Sign Company at \$30.00 per year.		Up 4-10-34
4-16-34	WAH		O. K. to pass contact.		Up 7-10-34
7-30-34	RNC		S. S. S. Co. still operating on this property		Up 10-20-34
10-22-34	RNC		Petersen receiving rental on this satisfactorily.		Up 1-9-35

[In pencil]: Vol-3-229

[Crest]
Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. 16th & Kirkham SW 26x75

LEGAL

LOC.

LEGAL

OWNER FITZ HENRY

ADDRESS 1430 Adeline

		Am't			
Date	Offered	By	Contact	Data	B4 4TA
			Under lease to Special Site Sign Co. 10 yrs from 6-8-27 @ \$24.00 yr Ann.		
6- 1-28		JHB	Mr. F. brother-in-law works for S. S. S. Co. Rental O. K.		
11-16-28		JHB	Rental paid up to 6-8-29.		
4- 1-29		JHB	Rental O. K.		
5-16-29		HHW	Bring up.		Up 6-20-29
8- 3-29		JHB	Rental coming in OK. Satisfied with present arrangements.		Up 12-1-29
12- 3-29		JHB	Rental O. K.		Up 5-10-30
5-10-30		JHB	Rental being paid regularly.		Up 11-10-30
11- 8-30		JHB	Rental O. K.		Up 3-1-31
5-27-31		WAH	O. K. to pass contact.		Up 12-1-31
11-15-31		WAH	O. K. to pass contact.		Up 8-1-32
9- 1-32		WAH	Check at later date.		
6-18-34		WAH	Situation unchanged. Check at later date.		Up 12-10-34

[Crest]

Foster and Kleiser
COMPANY

LOCATION 16th & Kirkham SW 32 x 79

LEGAL Lot - Portion of 13 Blk 374

OWNER P. C. BESWETHERICK

ADDRESS 1355 - 16th St., Oakland.

AGENT

LEASE No. 1633

CITY Oakland

CLASSIFICATION SUR

PHONE

Date	Amt. Offered	By	Remarks
			NL up 3/3/24
3-27-24	12.50	ED	10 yrs. from 3-15-24 @ 12.50 yr. Form B STRUCTURES REMOVED — CHECK FOR REBUILD OR CANCELLATION Up 12-15-25

[Stamped across face of card]: CANCELLED

[Crest]
Foster and Kleiser
COMPANY

CITY Berkeley CLASS. SUR LEASE NO. 2911
San Pablo EL 159' N. Dwight 220'
LOC. ~~San Pablo EL 233' S. Channing 220'~~
LEGAL Blk. 1928 Lots 7-12 Inc.
LOC.
LEGAL
OWNER ~~AL P. MAY~~
A. P. MAY
ADDRESS ~~First Nat'l Bank~~
5631 McMillan Ave. Oakland

Am't			
Date	Offered	By	Contact Data
3- 4-27	\$25.	WH	Will talk over with son (personal friend of mine) and let us know Up 3-10-27
3-20-27		WH	Out of town till April 1st. Up 4-1-27
3-31-27		WH	May will return around 15th. Up 4-15-27
5- 2-27		WH	10 yrs from 5-2-27 @ 36.00 yr S/A form A-1 from A. P. May (Community.)
7-16-31		RNC	Cancel as of Nov. 2, 1931. Letter of cancellation secured. WAH WAH STRUCTURES REMOVED — CHECK FOR REBUILD OR CANCELLATION Up 12-15-31

H

[Stamped on face of card]: CANCELLED

[Crest]

Foster and Kleiser
COMPANY

CITY Berkeley CLASS. SUR LEASE NO.

LOC. San Pablo EL 159 N Dwight 220'

LEGAL Block 1928 Lots 7 to 12 incl. in Higgins
Tract

LOC.

LEGAL

OWNER A. P. MAY

ADDRESS 5631 McMillan Ave. Oakland

		Am't			
Date	Offered	By	Contact Data	A2	4TA
			Formerly covered by Lease 2911 - 10 yrs from 5-2-27 @ \$36.00 yr S/A Form A-1 from A. P. May (community)		
3-31-32		WAH	Location cancelled at our request as of 11-2-31 as we were unable to use same.		
3-31-32		WAH	Under lease to Special Site Sign Co 10 yrs from 1-31-32 @ \$60.00 yr from A P May. 1-12½x47' Unill City Bulletin erected. Up 8-7-32		
9- 1-32		WAH	Check at later date.		

[Crest]

Foster and Kleiser
COMPANYLOCATION E 14th & 9th SW ~~125x125'~~ 100x100'
LEGAL Blk. 44 - Higley's Map of Clinton.OWNER ~~ESTATE OF MARGARET MC NEIL,~~
OR ~~€/ø Chas A McNeil, Administrator,~~
TENANT ~~MRS. MC CHESNEY A. C. NEILL~~
~~MRS. A. C. MCNEILL~~Room ~~1703~~ Tribunee Bldg.,ADDRESS ~~1424~~ 9th Ave., Oakland, ~~860~~ Portal Ave.,
Piedmont 49-4thSt., S. F.

AGENT

LEASE No. 3065

CITY Oakland

CLASS. SUR

PHONE

		Amt.			
Date	Offered	By	#550 - Vol. 5	Remarks	
9-2-26	120.-	LG		Said wants \$125.0 per mo. Nothing less. If contact frequently may lease	Up 11-10-26
12- 2-26		LG		Wants \$125 a mo., nothing lower. Asked if that was price for gas station. Said didn't matter. It is O. K. to build two 3 sheets at E. 14th & 9th on corner, but will not sign lease.	Up 2-1-27

- 1-12-27 EHD Has deal to lease for \$125.00 mo.
If does not go thru believe can be
secured for \$240.00 yr.
Up 2-15-27
- 3-14-27 BFC Mrs. McNeill will be ready to talk
business by end of week or early
part of next week. Up 3-18-27
- 3-18-27 BFC Mrs. McNeill too sick to inter-
view.-
- 3-28-27 BFC Mrs. McNeill still ill.-
- 5-10-27 BFC Letter to Mrs. McNeill enclosing
letter of permission at \$10. mo.
Up 6-1-27
- 6-16-27 BFC Mrs. M. seriously ill and can't be
interviewed. No one else has au-
thority to lease. UP 9-1-27

[Stamped on face of card]: EXTRA TIGHT
OVER

	Amt.		
Date	Offered	By	Remarks
7-14-27		BFC	Mrs. "M" has passed away- see son C. A. McNeil at Glencourt 1746 - after 7:00 P. M. next week.
7-21-27		BFC	Son at 112 Oakmount Str. (C. A. McNeill)

8- 1-27 BFC Will take up with interested parties and attorney, Fred Mellman,- Property now in Court.- Call him at office of Kessler & McNeill, 4th Str. San Francisco.

Up 8-11-27

8-13-27 BFC 5 yrs from 8-12-27 @ 120.00 yr. 12/A Special letter form from the Estate of Margaret McNeill, Charles A. McNeill, Administrator, by Fred B. Mellman, his attorney.

2- 8-29 HHW Property being sold. Money to go in escrow today to be used by Nat'l Canteen Co. Issue order to T. D. Tuesday, A. M. 2-12-29. Property sold to W. P. or H. P. Winegar thru H. C. Knight, R. F., 1819 Franklin St. This information from Chas. McNeil, former owner.

Up 2-15-29

2-21-29 HHW Nat'l Canteen Co. erecting a supply station. here. Cancel and make unsecured✓

Up 3-1-29

STRUCTURES REMOVED —
CHECK FOR REBUILD OR
CANCELLATION Up 3-25-29

OK HHW.

H

[Stamped across back of card]: CANCELLED

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO

LOC. E 14th & 9th Ave. SW 100x100'

LEGAL Lots ~~13~~ ~~16~~ inc. Block ~~44~~, Higley's Map of
Clinton Northerly 100' of lots 13, 14, 15,
16, Block 44 in Higley's Map of Clinton

LOC.

LEGAL RUTH T. DEGNAN

OWNER W. P. or H. P. WINEGAR

Tenant: National Kanteen Company
(Abe Leam - Sub-Lease to Mr. Saunders)

112 Garcia Avenue, San Leandro

ADDRESS H. E. Schonwasser, Genl. Mgr.
1706 Bldwy, Western Power Bldg.

Am't

Date Offered By Contact Data A₃ Bd ITA

2-28-29 NEB Formerly under lease No. 3065 - 5
yrs. from 8-12-27 @ \$120.00 yr.
12/A Special Letter from Charles
A. McNeill, Admin. by Fred B.
Mellman

- 2-21-29 HHW Nat'l Kanteen Co. erecting a supply station here.
- 3-27-29 7.50 HHW In view of our being unable to ill. this structures Schonwasser prefers to let ride for time.
Up 6-12-29
- 6-25-29 WAH Pass contact for present time.
Up 8-25-29
- 8-22-29 WAH H. H. W. contacted today rel. to information on "Sports Adv. Co.'s" proposed use of this location.
Up. 8-26-29
- 9- 6-29 WAH Declines to consider un-ill. structure here. Up 9-30-29
- 11- 8-29 WAH Believes best to not have adv. structure account limited space.
Up 12-10-29
- 12-20-29 WAH Same situation here.
- 2-24-30 WAH Now leased to S. S. S. Co. 10 Yrs. from 12-23-29 at \$60.00 Yr. 12/A Form A1 exactly like our A1 form. Schonwasser claims he leased to King because he agreed to erect an Illum. panel immediately (which he has done) and he is paying 8 times our offer of \$7.50 yr. Up 5-6-30

5-12-30 WAH Same situation. S. S. S. still operating here. Up 8-1-30

8- 4-30 WAH Schonwasser no longer with Nat'l Kanteen. S. S. S. lease still in effect

#5 - 12 - P-550

[Stamped on face]: ~~EXTRA TIGHT~~

OVER

	Am't		
Date	Offered	By	Contact Data
			under same conditions. Up 10-13-30
10-16-30	WAH		Same conditions. No progress at present. Up 11-27-30
11-29-30	WAH		National Kanteen going thru involuntary bankruptcy. Now in process of reorganization. Up 1-20-31
2- 2-31	WAH		Re-organization nearly complete; see later. Up 3-1-31
3-24-31	WAH		Same situation pending. Up 4-20-31

- 6-15-31 WAH O. K. to pass contact. Up 9-1-31
- 11- 9-31 WAH No change here. Up 1-26-32
- 2-18-32 WAH O. K. to pass contact. G. A. H.
Up 5-4-32
- 5-19-32 WAH Kanteen tenant received rental
from S. S. S. on this location.
Up 8-9-32
- 12-19-32 NEB Thos Bros report sale of property
by the Lurie Co. to Ruth Degnan
Up 2-10-33
- 1- 3-33 WAH GAH requested we pass contact
Up 5-20-33
- 6- 9-33 WAH Check at later date. Up 9-10-33
- 9-27-33 WAH Now owned by Ruth T. Degnan,
112 Garcia Avenue, San Leandro
- 10p10-33 ACD Tenant in Kanteen says he pays
rental to Mr. Whalen at 315
Montgomery Street, San Francis-
co. Does not receive rental from
panel upon this location.
Up 12-24-33
- 1-16-34 WAH Special Site maintaining panel un-
der arrangement with owner di-
rect in San Francisco. Up 4-10-34
- 4-16-34 WAH O K to pass contact. Up 8-1-34
- 8-14-34 WAH Special Site panel still maintained
here although badly blocked.
Up 11-1-34

[Crest]

Foster and Kleiser
COMPANY

LOCATION Franklin EL. 25' S. 20th 40' (against wall)

LEGAL B. 637 no lot # Fountain Place

OWNER

OR

TENANT ~~ANNIE D. BROSNAHAN~~ J. C. SEUL-
BERGER, L. S. DUNHAM & F. D. AL-
EXANDER

ADDRESS 1976 Franklin

AGENT

LEASE No.

CITY Oakland

CLASS. SUR

PHONE

Amt.

Date	Offered	By	Vol. 2 #48	Remarks
12-16-26		LG.	Owner of adj. prop. to south E. I. Veitch 135'	
12-30-26		KGH	Mrs. Brosnahan lives in the apt. house on this prop. and said her tenants would object to a sign here. No chance.	Up 2-15-27
3-24-27		MF	Objection from tenants and small revenue Mrs. "B" refusal to lease. Suggested 3 sh. placed diagonally behind tree near wall. No incentive.	Up 5-15-27
5-18-27		MF	Mrs. Brosnahan's residence. Does not care for signs on property. Good contact.	Up 7-1-27

7- 6-27	MF	Same situation. Can only build 1 sht.	Up 9-15-27
9-15-27	MF	Mrs. "B" will not change her decision.	Up 11-15-27
11-14-27	MF	Might consider for small payment. No structures	Up 12-1-27
1- 3-28	MF	Still undecided. See later	Up 2-1-28
2-13-28	15.00 RW	Mrs. B. might consent to our cutting down tree if rental sufficient. Fears panel would cause complaint from tenants. Offered \$5.00 for exclusive advertising priv. just to tie up location. Will not tie up, but will give us prior consideration.	Up 4-15-28

[Stamped on face of card]: EXTRA TIGHT

over

Date	Amt. Offered	By	Remarks
4-13-28		RW	Not in
4-14-28		RW	Miss Brosnahan wants no additional signs on property - will not tie up. Up 7-1-28
5- 5-28		RB	Property reported sold by Thos. Bros.. to J. C. Seulberger, L. S. Dunham, F. D. Alexander.
5-18-28	12.-	RW	Rent to be increased to 48.00 4/A when built. Use only for City Bulletin. All parties agreeable to leasing but Mrs. Brosnahan, for-

- mer owner, now tenant. Thinks other tenants might object. Let ride for 30 days and contact Mrs. Brosnahan. Up 6-15-28
- 6-12-28 RW Mrs. Brosnahan feels boards might detract from appearance of place but will consider. Up 8-10-28
- 8-25-28 WAH Alexander advises Seulberger looking over lease. See next week. Up 8-28-28
- 9- 6-28 WAH Let "ride awhile" as decided with HHW Up 10-15-28
- 10-15-28 5.- WAH Alexander promises to write us letter to effect that F & K will be given adv. privileges if same are ever granted. Their tenant is using for own sign at present. Letter should be in this week.
- 10-29-28 WAH Alexander again promises to write letter. Up 11-15-28
- 11-15-28 WAH " says Suelberger agreed to write this letter to us several weeks ago. Promises to have this done immediately. Up 12-15-28
- 2-19-29 HHW Lengthy interview with Seulberger covering this and other properties. Seulberger very friendly and promises us their cooperation at any time we need them. This cannot be built and S. assures they will always give us first consideration. Up 5-10-29

[Typewritten in red]: SEE NEW CARD

[Crest]

Foster and Kleiser
COMPANYCITY Oakland CLASS SUR ASSIGNED TO
LEASE NO.

LOC. Franklin EL 25.18 S. 20th 40x128'

LEGAL ~~Block 637, No lot Fountain Place~~ (metes and bounds)

LEGAL

OWNER J. C. SEULBERGER, L. S. DUNHAM & F. D. ALEXANDER
FRED & E. J. SEULBERGER

ADDRESS ~~1976~~ Franklin Street, Oakland
258-17th Street, Oakland, Calif.

Amt.

Date	Offered	By	Contact Data	B ₃	B2	1TA
5-10-29		NEB	See old card in trans. file.			
5-10-29		WAH	Seulberger advises "no change in conditions". Referred to his recent talk with H. H. W. and assured me also that they stood ready to always give F & K first consideration.			

Up 8-1-29

Am't			
Date	Offered	By	Contact Data
			now in old building. Up 7-1-31
7-29-31	WAH		O.K. to pass contact. Up 10-15-31
10-25-31	WAH		No available space here. Up 1-19-32
1-25-32	WAH		Same situation prevailing. Up-4-10-32
4-20-32	WAH		Only available space being used by tenant. Up 7-1-32
8-11-32	WAH		O K to pass contact. Up 10-28-32 Up 3-1-33
12-30-32	WAH		Under Lease to Special Site Sign Company, 1-12x25' Illum. Neon paint bulletin advertising Ranier Beer just constructed. High rental was necessary to secure this. Mr. Hughes declined to consider. Up 3-5-33 Up 8-1-33
8-12-33	WAH		Ranier Bulletin still here. We are now leasing another downtown lot from Seulberger. Up 11-10-33 Up 2-15-34
3-10-34	WAH		Check at later date. Up 5-20-34
6- 8-34	WAH		O. K. to pass contact. Up 9-10-34
10-26-34	ACD		Seulberger advises conditions sat- isfactory here. Up 1-15-35

- 8-29-28 WAH Friman says American Trust does now own this property. Will not consider sign space acct. leasing to wash. & polish parking company. Advises that tenant has no right to sublet any portion. Up 10-20-28
- 10-29-28 HHW Friman assures us that Brian who has this lease for auto laundry and parking only cannot sublet.
Up 1-15-29
- 1- 9-29 HHW OK to pass contact. Up 2-10-29
- 2-21-29 HHW Tenant declines to lease for adv. purposes. Up 5-20-29
- 5-22-29 HHW Brian, tenant, claims he is going to make some changes here which will eliminate any space for adv. purposes. Up 8-10-29
- 8-22-29 JHB Awaiting advice from G.A.H. as to offer on this. Up 9-10-29
- 9-19-29 JHB Brian advises that he does have the right to sub-lease any portion of this prop. for adv. purposes. See W.A.H. re. info. Mr. Friman gave him & H.H.W. to the contrary.
- 9-26-29 WAH Friman, Amer. Trust, again advises Brian's lease gives him no authority

OVER

Am't			
Date	Offered	By	Contact Data
(Brot. Forward)			or right whatsoever to lease adv. privs. of any nature on either frontage.
12- 4-29		NEB	Thos Bros. report this property sold to Joe Toplitzky. Up 12-14-29
12- 4-29		WAH	Warner Bros to erect theatre within 60 days. Up 1-15-30
1-15-30		WAH	Letter to L. A. requesting they contact Toplitzky as to plans for theatre construction. Up 2-5-30
1-22-30		WAH	See unsecured card for Franklin & 20th SW for letter to Los Angeles regarding this property. Up 2-8-30
2-25-30		SW	Thos. Bros. report property sold to Warner Bros. Downtown Theatre Corpn.
2-25-30		WAH	Another letter to L.A. req. information in this connection. Up 3-15-30
2-28-30		WAH	LA advises nothing definite to report as yet. Up 3-28-30
3-24-30		WAH	L. A. reports: "We are unable to secure a lease for you on the above described locations for reason that Warner Bros. are planning the erection of a building at a very early date." Up 6-10-30

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO 3503

LOC. Harrison & 7th NW 37½x75'

LEGAL Lots 22 and por. 21, Block 79 in Kellersberger's Map of Oakland

LOC.

LEGAL

OWNER ~~FRED A MILLER~~Tenant: ~~BLACKMAN~~

K. H. BLACKMON, Kings Service Stn.,

ADDRESS

2309 Adeline St.

7th & Harrison Sts., Oakland

Am't

Date Offered By Contact Data EXTRA TIGHT

11-15-28	JHB	Mr. A. White to install gas station on this prop. when present bldgs. are removed. Watch for available adv. space
----------	-----	---

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. Harrison & 7th NW ~~37 1/2 x 75~~ 100x125
 LEGAL Lot ~~22~~ and ~~part of~~, Block 79 in Kellers-
 berger's Map of Oakland
 LOC. Lots 19 to 24 inclusive, Block 79, Kellers-
 berger's Map of Oakland
 LEGAL

OWNER ~~MILLER~~ FRED A. MILLER
 Tenants: BECKMAN & SPRAU
 ADDRESS C/o W. Eliassen, Central Bank Bldg.
 Oakland, California

	Am't		
Date	Offered	By	Contact Data B4 ITA
			Formerly under lease to us No. 3503 - 10 yrs from 1-16-29 @ \$7.50 yr Ann. Form A-1 from K. H. Blackmon (tenant).
4- 4-29		JHB	Not advisable to tie up with Beckman as yet as he advises he contemplates selling soon.
4-19-29		JHB	Mr. Ott, new owner of station will do nothing for time being.
5-20-29		JHB	Ott wants rear of filling station built so that view of old houses etc. is completely blocked. Boards to be built at once.

- 5-25-29 JHB Surveyed property with G. V. Smith who advised location only suitable for six sheets.
- 5-29-29 JHB Submitted offer to Otto to build six sheet so that good portion of view of old houses blocked. Will take up with his Company & advise.
- 6- 1-29 JHB Otto advises he has made deal with S. S. S. co to place three 25' panels of illuminated posting at rental of \$9.00 per month for a period of 3 yrs from 6-1-29.
- 6- 1-29 NEB Under lease to Special Site Sign Co. 3 yrs from 6-1-29 @ \$108.-yr 12/A
- 7- 3-29 JHB 3 Ill. panels built by S. S. S. Otto satisfied with present arrangements.
- 9- 1-29 JHB Nothing new on this. S. S. S. only using 1 panel. Up 8-25-29
(over) Up 11-27-29

Am't			
Date	Offered	By	Contact Data
12- 1-29	JHB	Rental being paid regularly.	Up 2-1-30
2-20-30	JHB	Rental O.K.	Up 5-1-30
5-10-30	JHB	Joe Otto advises rental paid regularly.	Up 7-17-30

7-25-30	JHB	Rent coming in O.K.	Up 10-10-30
10-20-30	JHB	Rental O.K. on this location.	Up 1-5-31
1-20-31	JHB	Rental O.K. on this location.	Up 4-5-31
4-13-31	JHB	Rental O.K. here.	Up 7-1-31
7-10-31	WAH	O. K. to pass contact.	Up 9-27-31
9-29-31	RNC	This is O. K. at present.	Up 12-20-31
12-29-31	RNC	No change on this.	Up 3-18-32
3-18-32	RNC	Rental coming in satisfactorily here.	Up 6-5-32
6- 8-32	WAH	O. K. to pass contact.	Up 7-10-32
12- 1-32	RNC	No change on this.	Up 11-20-32
2- 8-33	EAD	1 Unill B P changed to City Illum. Bu.	Up 2-20-33 H. Up 7-1-33
7-11-33	RNC	Otto, Signal Oil, advises rental coming in O. K.	Up 10-1-33
10-17-33	RNC	Otto, of Signal Oil, advising everything satisfactory here.	Up 1-9-34 Up 4-10-34
4-24-34	RNC	S. S. S. still operating on this location.	Up 7-17-34
7-18-34	RNC	S. S. S. still operating here.	Up 10-9-34
10-18-34	RNC	S. S. S. using this for 3 PP rental being paid satisfactorily	Up 1-10-35

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

Broadway EL 134 S 20th 125
 LOC. ~~Broadway EL 134 S 20th St. 93' (aga.wall)~~
 LEGAL Lot 3 and por. 4 Block F Fountain Place
 LOC.
 LEGAL WARNER BROS. DOWNTOWN
 THEATRE CORPN.

OWNER ~~TWENTITH & BROADWAY REALTY~~
~~CO.~~
~~MERCANTILE AMERICAN REALTY~~
~~CO.~~

Tenant: Mr. Brian

ADDRESS

e/o Mr. Priman, S.F.

Date	Offered	By	Contact Data	Am't	Gr	B4	ITA
------	---------	----	--------------	------	----	----	-----

EXTRA TIGHT

7-20-28			See filed office record card on file.				
7-20-28		ED	Leased for parking station.				
8- 6-28		HHW	Working out deal with Brian				
							Up 8-20-28
8-11-28		RB	Property reported sold by Thos. Bros. to Mercantile American Realty Co.				

Unill B P new style poster panel
and 1 Illum new style poster
panel. Up 8-8-31

- 1-12-31 WAH No reply from L.A. to date.
Up 2-15-31
- 2-16-31 WAH No report from L.A. as yet.
However, learn theatre may start
soon and will cover entire prop-
erty. Up 4-20-31
- 4-23-31 WAH Auto Laundry advises S. S. S. in
arrears on rental; will not advise
term of S. S. S. lease.
Up 6-10-31
- 7-20-31 WAH O. K. to pass contact. Up 10-5-31
- 10- 5-31 WAH O. K. to pass contact.
Up 12-18-31
- 12-24-31 WAH No change on this location.
Up 3-10-32
- 3-12-32 WAH Deal for theatre construction in-
definitely abandoned. Calif. Auto
Laundry continuing with S. S. S.
Co. on original basis. Up 6-1-32
- 6- 8-32 WAH O K to pass contact. Up 7-10-32
Up 11-10-32

[On back]:

Am't			
Date	Offered	By	Contact Data
8-19-32	WAH		Contacted Lou Halper, exec. vice president and general manager of

[Crest]

Foster and Kleiser
COMPANY

166

~~154~~LOCATION Broadway EL ~~120~~' S. 20th St. ~~90~~' 93'
(against wall)LEGAL Lot 3 and portion 4 Blk ~~630~~ Blk F - Fountain
PlaceOWNER ~~ORPHEUM REALTY CO. FRANK~~
~~PROCTOR~~ Oakland Title Ins. & G. Co.ADDRESS Oakland, Calif., ~~Tribune Tower~~. TWEN-
TIETH & BROADWAY REALTY CO

AGENT

LEASE NO.

CITY Oakland

CLASSIFICATION SUR

PHONE

Amt.				
Date	Offered	By	Vol 1 #48	Remarks
			Up 2-18-24	
3-28-24		LG	Leased for auto market using frontage up 6-1-24	
6- 6-24		ED	Leased for auto market at 150.00 per mo. up 8-6-24	
8- 6-24		LG	Leased to Jacks Auto Market. Up 11-6-24	
11- 3-24		LG	Can't put up any signs. Leased for auto market. Up 1-4-25	

1- 7-25	LG	Leased for Auto Market. Up 4-1-25
4- 4-25	LG	Using for Storage purposes (Elks Club) Up 6-29-25
6-25-25	LG	Will be in use for 8 months because of new bldg. no progress Up 9-14-25
9-14-25	LG	Leased for auto market storage. No progress. Up 12-1-25
12- 1-25	LG	No progress - auto market. Up 2-20-26
2-19-26	LG	Rented for auto market. Mo. to mo. To build theatre any day. Up 5-7-26
3- 16-26	WH	Only way to build is in violation of billboard ord. Up 6-10-26
5- 4-26	LG	May build but at present getting good money from auto yard. Up 7-28-26
7-30-26	WH	Same condition existing. Up 10-20-26

	Amt.			
Date	Offered	By	Remarks	
10-28-26		WH	Auto yard still on prop. Up 1-20-27	
12-13-26	30.-	EHD	Quoted \$15. panel. Minimum \$30. Wants to wait for decision on 17th SL W. Telegraph.	
12-15-26	120.-	EHD	Told Proctor would guarantee 8 panels. Req. outline in letter. Up 12-16-26	

12-16-26	EHD	Left letter with Proctor. Will advise.	Up 12-20-26
12-20-26	EHD	Proctor req. call end of week. Has deal on.	Up 12-23-26
1- 5-27	EHD	Option still out on prop. Does not want us to go to expense of building and then take down at once. Req. call.	Up 1-19-27
2-17-27	ED	Deal to be closed	Up 2-24-27
2-23-27	ED	Deal to be closed	Up 3-15-27
3-19-27	ED	Property sold to Oakland Title.	Up 3-30-27
4- 2-27	ED	Will get name of new owner	Up 4-15-27
5-26-27	Ed	Will get name from Oakland Title Co.	Up 6-15-27
6-19-27	ED	Will get name from Oakland Title Co.	Up 7-15-27
6-21-27	ED	Property sold to. Hamberger	Up 7-5-27
7- 7-27	ED	Deal on for lease.	Up 7-15-27
7-19-27	ED	Will get name of new owner.	Up 8-15-27
10- 1-27	ED	Mr. Rittigstein said to call	
11-15-27	ED	" will see owner	
12-30-27	ED	Owner in Los Angeles.	Up 1-15-28
2-10-28	ED	Mr. Rittigstein will see owner.	
5- 2-28	ED	" " " "	Up 5-30-28
6-19-28	ED	Said to call.	Up 7-15-28

[Written in red]: Transferred to new card

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. Broadway EL 174.25 S 38th 90'
LEGAL So. 42' lot 2, All lot 3 Block 1 Weston Tract
LOC.
LEGAL

OWNER UNITED ENGINEERING COMPANY
Atten: Mr. R. E. Christy, Secty.
ADDRESS 298 Stewart Street, S. F.

Am't				
Date	Offered	By	Contact Data	ITA
			B 3 B4	

Formerly Lease 3955 2 yrs from
6-28-30 @ \$90.00 yr 4/A Form
Special Letter from United En-
gineering Co. by Christy, Secty.
2-C

12-7 -31	WAH	Letter of cancellation secured.
1-21-32	WAH	May be able to secure again on re- duced rental basis at later date.

Up 4-7-

- 6-18-30 WAH L.A. reports Warner Theatre to start within 30-40 days.
Up 8-15-30
- 8-20-30 WAH Letter to L.A. req. Mr. Evans again be interviewed. Up 9-5-30
- 9-10-30 WAH L.A. advises plans have not fallen through - temporarily delayed. Expect to commence construction as soon as conditions permit.
Up 11-10-30
- 11- 7-30 WAH Spec. Site bldg on here. Have made deal with tenant to maintain priv work in exchange for several panels.
- 11- 7-30 WAH Letter to L.A. req. immediate contact to determine tenant's authority to sublease for advertising purposes. Up 11-12-3p
- 12- 1-30 WAH L.A. adv. Auto Laundry tenant has made lease without Warner Bros. knowledge or consent. Further advises tenants are only on mo to mo basis. They wish to check further into this situation before making any decisions.
Up 12-15-30
- 12- 5-30 WAH S.S.S. Co. have erected two Unill B P panels. Up 12-15-30

SEE NEW CARD

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR ASSIGNED TO
LEASE NO.

LOC. Broadway EL 134 S 20th 125'
LEGAL Lot 3 and So. 32' lot 4, Block F in Fountain
Place

LOC.
LEGAL

OWNER WARNER BROS. DOWNTOWN
THEATRE CORP'N

Tenant: Mr. Brian

ADDRESS ~~Los Angeles, California~~
C/o B H Cohn, 6425 Hollywood Blvd.,
Hollywood, California

	Am't			
Date	Offered	By	Contact Data B4	ITA
12- 5-30		NEB	See filled office record card for old data.	
12- 5-30		WAH	S. S. S. Co have erected 2 Unill B. P.	
12-17-30		WAH	Another letter to L. A. requesting report of progress, particularly since our letter of 11-6. S. S. S. Co have illuminated one panel. Capacity should now show one	

- 4-16-32 WAH G. A. H. still feels that this extremely difficult to build under present city ordinance. Pass contact. (H) Up 7-1-32
- 8- 5-32 WAH Special Site Sign Co have now leased and erected 2 Illuminated Poster Panels which do not violate city ordinance as they have built a bulkhead out to property line, bringing their panels to the front of street in order to be 25' distant from adjacent houses.
Up 10-15-32
Up 1-1-33
Up 4-1-33
Up 11-1-33
Up 2-15-34
- 3-10-34 WAH Check at later date. Up 5-20-34
- 6- 8-34 WAH O. K. to pass contact. Up 9-10-34
- 9-14-34 WAH Special Site lease still in force. Painted bulletin and panel being maintained. Up 11-20-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO. 3955

 LOC. ~~Broadway EL 250' N. Mess 45' Broadway~~
 EL 174.25 S 38th St. 90
LEGAL ~~Lot 2 Block 7 Weston Tract~~ Por. Lot 2 &
all 3 - Blk I Weston Tract

LOC.

LEGAL

 OWNER UNITED ENGINEERING CO.

ADDRESS 298 Stewart St., San Francisco

(Mr. Gray or Mr. Christy)

~~EXTRA TIGHT~~

	Am't			
Date	Offered	By	Contact Data	A3 ITA

See former office record card in Filled File)

Up 2-25-28

1-23-28 60.00 WAH Letter to Knight requesting he
contact owners for us Up 2-20-283- 1-28 WAH Letter from United Eng. Co. offer-
ing to lease entire property (in-
cluding house) at \$50.00 mo.

Up 5-1-28

5-17-28 WAH Willing to lease under above
terms. No progress. Up 7-10-28

- 7-20-28 60.- WAH Talked with Christy who said Gray rented to "Art Adv. Co." (statues) on mo. to mo. agreement, cancellable anytime. Believes they are paying \$120.00 yr. Not sure as Gray made arrangements during his absence. Says they are more than satisfied as they are not tied up as they would be under terms of our agreement. Up 10-1-28
- 10-11-28 WAH Christy says we are just wasting time contacting them. Too well satisfied with present mo. to mo. arrangements on Status at \$10.00 mo. No progress at all.
- 10-24-28 WAH Absolutely declines to consider as long as present "Statue" co. care to continue on their mo. to mo. basis. Up 1-5-29
- 1- 4-29 WAH Both partners decline to lease to us as long as other company continue on present satisfactory basis. Up 3-15-29
- 3-21-29 WAH Gray & Christy both feel disinclined to make any change. Up 6-8-29

[Stamped on face]: CANCELLED

[On back]:

Am't			
Date	Offered	By	Contact Data
6-13-29		WAH	Situation unchanged. May be some change inside 30 days or so See later. Up 7-15-29
8-9-29	60.-	WAHA	Description as above now correct. Entire 90' frontage should be tied up, with understand. that our structure would be built on open portion only. Writing letter to S. F. today requesting contact be made. Up 9-10-29
8-24-29		WAH	S. F. advises Hy-Art lease still in effect - @ \$120.00 yr. rent paid to 6-1-30 Up 11-7-29
11-24-29		WAH	Conditions unchanged. Let ride for time being. Up 1-20-30
2-24-30		WAH	Letter to S. F. req. contact. Up 3-28-30
3-25-30		WAH	S. F. advises rental paid in advance to June 1930. Willing to consider our prop then, however. S. F. will follow up. Writing L. A. today req. they contact, Hy-Art Display Co. for information relative to location. Up 4-28-30.
4- 4-30		WAH	Letter to L. A. Up 4-25-30

- 5-15-30 WAH L. A. advises several calls at Hy-Art, 554 W. Garfield Ave., Glendale, and have failed to find any activity there, and letters sent to that address have resulted in no replies. Writing S. F. today to endeavor to secure a lease from owners in San Francisco in June.
Up 6-14-30
- 6-16-30 WAH J. Wyman S. F. now handling - Secty. Co. personal friend of his. Believes he can secure. Up 7-1-30
- *6-28-30 WAH 2 Yrs from 6-28-30 at \$90.00 Yr. 4/A Form Special Letter from United Engineering Co. by R. E. Christy, Secty. 2-C
- 10- 1-31. WAH R. Christy favorable to our request for cancellation. Will discuss with his partner Mr. Gray.
- 10-17-31 WAH Hold Rental after Dec. 28, 1931. Letter of cancellation mailed for signature today. Unsecured card made.√ Up 10-28-31
- 10-21-31 WAH Cancellation secured today effective 12-28-31. WAH WAH
Up 1-15-32.

[Stamped]: Structures Removed—Check for Rebuild or Cancellation

EXTRA TIGHT

[Crest]

Foster and Kleiser
COMPANY

LOCATION 13th & Alice NE (Res) 75x25

LEGAL Blk 195 Lot 1 Kellersberger's Map of Oakland

OWNER ~~HENKAN~~ LILLIAN ISSAACS, J. D.
ISAACS

ADDRESS

AGENT G. M. Richardson - Oakland Bank Bldg.,

LEASE NO.

CITY Oakland

CLASSIFICATION SUR

PHONE

Amt.				
Date	Offered	By	Vol. 6 #34	Remarks
			Up 3-3-24	
6-	6-24	LG	Nothing doing. Had 3 sheets on fence. May put in garages. City is trying to condemn old houses	
			Up 8-6-24	
8-	8-24	ED	At present time house on the property. Up 11-8-24	
11-	14-24	ED	Going to build 30 days. Up 2-1-25	
2-	2-25	ED	May build in 30 days. Up 4-15-25	
4-	14-25	ED	Going to build. Up 6-5-25	
6-	10-25	ED	" " " 30 days.	
				Up 8-1-25
8-	1-25	ED	May build in 30 days.	
				Up 10-1-25

10- 3-25	ED	Going to build.	Up 12-1-25
12- 4-25	ED	Deal on for bldg.	Up 2-1-26
2- 4-26	LG	Bldg. on this. Signs would kill.	Up 4-28-26
4-20-26	LG	“ prop. Signs would kill. No progress.	Up 7-10-26
7-10-26	LG	“ . Signs will kill house.	Up 10-3-26

[On back]:

Date	Amt. Offered	By	Remarks
10- 3-26		LG	Kill view of house. Up 12-20-26
12-29-26		KGH	Mr. Richardson is out of town until Monday Up 1-2-27
1-14-27	\$20.	KGH	Mr. Richardson will take up with the owners. See in about 10 days.
1-31-27		KGH	Mr. Richardson has not heard from all parties interested yet.
2-25-27		KGH	Mr. R. said he has had no reply from the Isaacs. He can do nothing until he hears from them. Up 3-20-27
3-31-27		MF	Isaacs still traveling. Richardson will advise when he hears from them. Up 5-1-27
5- 6-27		MF	Situation the same. Will phone when Isaccs returns. Up 6-15-27

- 6-25-27 MF Richardson has had no further word from Isaacs. Up 8-1-27
- 8-17-27 MF "R" says Isaacs still traveling & has had no word from them. Isaacs home in N. Y.
Up 10-15-27
- 11-15-27 WAH Contacted Mr. and Mrs. Morris, 434 Post St. S. F., 1/2 owners, and daughter and son-in-law of the Isaacs. Endeavoring to lease on optional basis. - (survey location)
- 12- 8-27 WAH Morris has talked over with atty. and decided against idea. Says present Sweeney 6's must come down. Up 1-22-28
- 1-30-28 WAH Wants no signs here. Says he has ordered Sweeney off.
Up 3-15-28
- 4-12-28 WAH Morris in N. Y. for 3 or 4 weeks.
Up 5-15-28
- 5-16-28 WAH Tenant gave lease to Shurtz. Morris ordering Shurtz to vacate. Promises that F. & K. will secure if anyone does. Will not even give us letter of permission to keep property clean. Up 7-15-28
- 7-19-28 WAH Morris in N. Y. City. Will return end of month. Up 8-2-28

[Written in red]: SEE NEW OFFICE RECORD CARD

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. 13th & Alice NE (res.) 100x50

LEGAL Block 195, Lots 1, 2 & S. 50' of lot 28, Kel-
lersberger's Map of Oakland

LOC.

LEGAL

OWNER ~~LILLIAN & J. D. ISAACS~~
~~MR. & MRS. V. D. MORRIS~~
LILLIAN ISAACS & JOHN D ISAACS,
C/o B. C. Morris,ADDRESS ~~C/o G. M. Richardson, Oakland Bank Bldg.~~
~~(517 Sutter St. San Francisco)~~
517 Sutter St. San Francisco, Calif.

Am't

Date Offered By Contact Data ~~A3~~ B4 2TA ~~ITA~~See filled office record card for
previous information.10-19-31 RNC Offered in return for painting
fence. Tenant thinks she would
like all boards removed.

Up 12-27-31

- 11-19-31 WAH Morris advises conditions make it impossible to do otherwise than allow tenant to continue for time being on present basis with Special Site. Special Site have just recently completed 2 Illuminated Poster Panels for which they pay tenant \$60.00 yr & Morris \$60.00 yr on a one year lease only.
Up 2-1-32
- 2-18-32 WAH Same situation prevailing.
Up 5-4-32
- 5- 3-32 WAH There will be no change here until the latter part of year.
Up 7-20-32
- 7-18-32 WAH O. K. to pass for present.
Up 12-10-32
Up 5-1-33
Up 10-1-33
Up 3-1-34
- 3- 9-34 WAH Morris advises same tenant in possession of property and while she is still a source of trouble, they are reluctant to oust her because of inability to find another tenant. Special Site panels are maintained under agreement with this tenant.
Up 6-20-34

[On back]:

Date	Am't Offered	By	Contact Data
7-26-34	WAH		Same situation prevailing. S. S. S. Co. still here. Up 9-10-34
9-17-34	WAH		Morris in New York City until October 1st. Up 10-1-34
11- 9-34	WAH		Called in answer to Morris' letter requesting our proposition. Find that S. S. S. Co have two yr lease from 10-29-31 @ \$75.00 with option of yr to yr renewal unless notified 30 days prior to end of each succeeding year. Up 5-1-35

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS HWY LEASE NO.

LOC. Mission San Jose Hwy NL 4-6/10 Mi E "B"
 St. - Hayward

LEGAL

LOC.

LEGAL

OWNER J. P. SILVA ADDRESS Premises

		Am't		
Date	Offered	By	Contact Data	B2 4TA
<p style="text-align: center;">Under lease to Special Site Sign Co. @ \$20.00 yr Ann.</p>				
11- 5-28		LG	Mrs. Silva could not give rental dates.	
4- 8-29		RW	Silva Jr. says Mr. S. still getting rent. Does not remember rental dates.	Up 8-8-29
5-17-29		RW	Not desirable account traffic very light due to new Alvarado Hwy.	Up 11-15-29

- 11-15-29 RW Lease to be cancelled account Silva no longer tenant. See E. A. Duveneck regarding other F & K locations on this property.
Up 12-15-29
- 12-26-29 RW Mr. Duveneck advises Mr. May, owner, gave permission for bd. to remain a while longer.
Up 3-10-30
- 6- 2-30 RW Mr. May says unless S. S. S. board is down in 30 days he will assume the right to remove it. Notice to this effect sent to S. S. S.
Up 9-10-30
- 10-16-30 RW Mr. May expects to remove board at earliest convenience.
Up 1-10-31
- 2-19-31 RW Will see Mr. May Mar. 5th.
Up 3-1-31
- 11- 3-31 RW SSS board still on property. Man undecided.
Up 3-1-32
- 4-25-32 RW SSS board still on property.
Up 8-10-32
- 9- 1-32 WAH Check at later date.

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. 23rd Ave & E 8th SE 30.69x60.25

LEGAL Westerly 64.5' of lot 32, Block B in Resub of
Block 23 North Alameda Tract

LOC.

LEGAL

OWNER MAUD A. JONES

ADDRESS 10969 S. Spring St. Los A.

		Am't		
Date	Offered	By	Contact Data	B4 4TA

Under lease to Special Site Sign
Co. 1 Unill B P Built

5-28-31	WAH	O. K. to pass contact.	Up	9-10-31
---------	-----	------------------------	----	---------

9-10-31	WAH	O. K. to pass contact.	Up	2-10-32
---------	-----	------------------------	----	---------

2-18-32	WAH	Check at later date.		
---------	-----	----------------------	--	--

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS HWY LEASE NO.

LOC. E 14th SL 4/10 Mi E San Lorenzo Junction

LEGAL

LOC.

LEGAL

OWNER MR. J. COELHO

ADDRESS San Lorenzo, Calif.

	Am't				
Date	Offered	By	Contact	Data	B2 4TA

Under lease to Special Site Sign
Co. 5 yrs from @ \$30.00 yr

5- 3-28	LG	Location only fair.
10-28-28	LG	Could not give date of payment. Advises hwy going thru. Sign would have to come down.

- 5-29-29 RW This board must be moved when highway widened. Up 11-15-29
- 11-15-29 RW Board blank. Let ride until highway widened. Up 2-20-30
- 3- 7-30 RW Hwy. to be widened within 60 days. Up 5-10-30
- 6-12-30 RW Board has been set back - rental paid - lease O. K. Up 11-10-30
- 11-17-30 RW Coelho states lease covers only space occupied by board. Rent paid Up 4-20-30
- 6-15-31 RW Coelho states rent unpaid. S. S. S. may give up location.
- 7-10-31 RW Board still on property. One-half of 50' bears copy of American Creamery. Up 10-20-31
- 12- 9-31 RW Property may be sold to Oakland Speedway. Up 2-10-32
- 12-19-31 RW Condition unchanged.

[Crest]
Foster and Kleiser
COMPANY

CITY Oakland CLASS HWY LEASE NO.

LOC. San Pablo & Lenox SW (El Cerrito)

LEGAL

LOC.

LEGAL

OWNER JOHN STURM

ADDRESS 541 - 63rd St. Piedmont 3610-W

Date	Offered	By	Am't	Contact Data	B2	4TA
				Under lease to Special Site Sign Co. @ \$20.00 yr.		
11- 7-28		RW		Wagner, Realtor,	states	Coast
				have lease to	Jan. 1, 1929.	Paid
						\$20.00.
5-18-29		RW		See nearer	expiration	date.
						Up 11-3-29
11-20-29		RW		Rental paid to	January 1st,	1930.
						Up 10-20-30
12-14-30		RW		G. A. H. does not	wish to make	offer.
						Up 7-20-31
9-21-31		RW		Rent paid to	January 1st,	1932
						Up 1-20-32
1-21-32		WAH		Check this at	later	date.

[Crest]
 Foster and Kleiser
 COMPANY

CITY Oakland CLASS HWY LEASE NO.

LOC. San Pablo & Huntington NW 50x100
 LEGAL Block 66, Lot 27 and 28
 LOC.
 LEGAL

OWNER ~~DAVID J. CROSS~~
 EDWARD FROEBEL
 ADDRESS ~~Richmond, Calif.~~
 1210 McDonald Ave., Richmond

Am't					
Date	Offered	By	Contact	Data B2	4TA
			Under lease to Special Site Sign Co. 5 yrs at \$15.00 yr from 1-1-25		
5-	7-28	LG	Will advise when receives check for rental, giving payment date.		
11-	6-28	LG	Call later. Will give new owner's name or check at city hall.		
					Up 1-15-29
6-	18-29	RW	Mr. Froebel will entertain rent offer at expiration of S. S. S. lease.		
					Up 11-10-29
12-	12-29	RW	Mr. F. says S. S. S. have lease for four more years.		
					Up 6-15-30
7-	23-30	RW	Lease still holds. Rent paid.		
					Up 2-20-31
2-	20-31	RW	Rent paid to 1-1-32		
					Up 10-20-31
12-	10-31	RW	S. S. S. to continue. Space sold to Hotel Oakland.		
					Up 6-20-32
12-	19-31	RW	Condition unchanged.		

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. E 10th & 8th NW

LEGAL

LOC.

LEGAL

OWNER J. M. LOTTA

ADDRESS Broadway & 38th NE

Am't

Date Offered By Contact Data B4 4TA

Date Offered	By	Contact Data B4	4TA
		Under lease to Special Site Sign Co. 5 yrs from 10-28-27 @ \$50.00 12/Ann	
11- 3-27	HHW	Above information re. rental or time is not definite. Lotta offered this to us for \$50.00 yr saying Spl. Site offered \$50.00. Location would not warrant this rental.	
2- 1-28	HHW	Special Site paying \$50.00 yr. Have good lease.	
7-18-28	HHW	Additional panel built. Good lease but high rental.	
3-26-29	HHW	Property to be cut down account widening of E 10th St. State condemning property for City of Oakland.	

- 3-26-29 HHW Lease executed by Howard M. Payne to S. S. S. Co. for 5 yrs from 10-28-27 recorded 12-24-27.
Up 7-1-29
- 7-10-29 WAH OK to pass contact on this.
Up 11-11-29
- 11-15-29 WAH Will survey this territory thoroughly with Quinn first of year. Let ride for time being.
Up 1-25-30
- 2-28-30 WAH Let ride. Up 7-25-30
- 8-24-30 RGB Still leased to S. S. S. Co.
Up 1-20-31
- 2- 4-31 RGB Same owners; still leased to S. S. S. Co. Up 10-2-31
- 10-10-31 WAH O. K. to pass contact. Up 8-1-32
- 9- 1-32 WAH Check at later date.

[On back]:

Date	Am't Offered	By	Contact Data
2-13-34		ACD	Mrs Anderson informs that Mr. Tapscott in the Tapscott Bldg. is handling this property
6-13-34		ACD	Special Site Sign Co. is handling this property in a satisfactory manner Up 12-13-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. 7th St. SL 900' W of S. P. Subway

LEGAL

LOC.

LEGAL

OWNER SOUTHERN PACIFIC COMPANY

ADDRESS

	Am't			
Date	Offered	By	Contact Data B2	4TA
10- 5-32		EAD	Under lease to Special Site Sign Company 1-12x40' Illum City Bu. erected advertising Associated Oil.	Up 3-18-33 Up 11-1-33
12- 5-33		WAH	Special Site still maintaining structures here.	Up 11-1-34
11-10-34		WAH	S. S. S. Co. still here.	Up 8-1-35

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. E 12th NL 124' E. Fruitvale 73'

LEGAL ~~Blk 773~~ Lots 28-29-30 Phillips Sub. of Blk
773 of Levy & Lane Tract Blk 2194

LOC.

LEGAL

OWNER THOS. H. HAMON

So.

ADDRESS 531-4th St., / Vallejo
Box 575, Corning, Tehama County

EXTRA TIGHT

Am't

Date	Offered	By	Contact Data	B3	B4	2TA
11- 9-27		WAH	Spec. Site have target on this property.			
11-10-27		WAH	Wrote S. F. today req. tie up \$5.00 to \$7.50 until built and then double rental when built.			Up 12-10-27
11-14-27		RB	S. F. advises they have turned over to Geo. Richards to contact.			
12- 9-27		HHW	No info. as yet.			Up 1-10-28
1-10-28		HHW	No contact as yet.			Up 2-15-28
1-30-28	7.50	WAH	Letter from S. F. stating Hamon has been offered \$40.00 by Spec. Site for large sign. Tenants now object to Spec. Site target; of course he declines our offer of \$7.50 yr.			Up 4-30-28

5- 4-28	WAH	Conditions remain same. No progress. Up 9-1-28
8-30-28	WAH	Tenants object. Hamon will not consider under these conditions. Up 11-15-28
11-15-28	WAH	Tenants still object to Special Site target here. Cannot build larger <i>larger</i> structure under these conditions. Up 3-1-29
2-27-29	WAH	Cannot secure this from owner due to tenants objection. Might be well to write S. F. and have owner contacted on next update. Up 5-16-29
5-23-29	WAH	Tenant Mrs. Petersen, will be home in A. M.
6-20-29	RGB	Tenant objects to structures very much. Would spoil garden. Up 9-5-29
9-12-29	40.- RGB	Letter to Sacramento req. contact Mr. Hamon & offering \$40.00 yr. [On back]:

Am't		
Date	Offered By	Contact Data
10- 8-29	RGB	Letter from Sac. adv. Mr. Hamon out of town. They will contact him on his return.
10-25-29	RGB	Letter from Sac. stating Mr. Hamon's house in Corning closed and return unknown. Up 1-25-30
12-20-29	RGB	Tax records give address as 531 4th St. So. Vallejo.

- 1- 4-30 RGB Letter to S. F. Branch asking them
to contact Hamon in Vallejo.
Up 1-25-30
- 1-25-30 RGB No reply from S. F. as yet.
Up 2-10-30
- 2-13-30 RGB Letter to S. F. req. contact
Up 2-27-30
- 2-27-30 RGB No reply from S. F. as yet.
Up 3-10-30
- 3-10-30 RGB Letter from S. F. stating not to be
found in Vallejo.—
- 4- 6-30 RGB Contacted tenant who gives corn-
ing address which Sacramento
Branch could not find. Wait for
tax records Up 5-8-30
- 5-17-30 RGB Conning address still in tax books.
Up 8-1-30
- 8-16-30 RGB S. S. S. Co. target still here.
Up 9-28-30
- 9-20-30 RGB 1 Panel, B. P. erected here today
by S. S. S. Co. Up 11-20-30
- 11-24-30 EGB S. S. S. still here. No change.
- 12- 1-30 RGB Letter to Sacramento Branch to-
day. Up 1-12-31
- 2-19-31 RGB Letter to Sacramento Branch.
Up 3-3-31
- 3-23-31 RGB Sac. branch replys S. S. S. has 10
yr. lease at \$25.00 per year.
Up 8-8-31
- 8-20-31 WAH O. K. to pass contact. Up 2-2-32
- 2-18-32 WAH Situation unchanged at this time.
up 8-1-32
- 9-1-32 WAH Check at later date.

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. 40th St. and Manila NE 32. 8x103.1
 LEGAL Lot 7 Block H In Resub. of Blocks H & G
 Alton Park

LOC.
 LEGAL

OWNER CHARLES M. WOOD
 ADDRESS (Syndicate Bldg.) - 851 52nd St.

Date	Offered	By	Contact Data	Am't	B3	B4	4TA
6-27-27	\$18.-	BFC	Wood wants \$100.00 year to balance rental on 32nd and Peralta.				
7-25-27		BFC	Same as above--Assign to E. A. D.				Up 8-15-27
9-21-27		ED	Said to call				Up 9-26-27
12- 8-27		ED	Wants \$100 per year				Up 12-12-27
1- 9-28		ED	Wants \$36 per year				Up 1-15-28
1-31-28		ED	Said to call				
2- 5-28		ED	Said to call.				Up 6-1-28
5-23-28		Ed	Will lease for taxes.				Up 6-1-28
6-15-28		ED	Will lease for taxes.				Up 7-30-28
8- 6-28		ED	Taxes \$60.00 a year.				Up 8-30-28
8-22-28		ED	Wants \$60.00 a year.				Up 9-30-28
9-30-28		ED	"				Up 12-30-28
1-12-29		ED	Will lease for taxes.				Up 1-20-29

1-20-29	ED	“ “ “ “	Up 3-30-29
3-30-29	ED	“ “ “ “	\$80.00 Up 7-1-29
7- 5-29	ED	Will lease for \$75.00 a year.	Up 8-30-29
9-23-29	RGB	Wood feels our system of leasing property <u>all</u> wrong; would like to reorganize it; is renting us some property already, but will not con-	OVER

Am't

Date Offered By

(Brot. Forward)		sider this till our offer approximates \$100.00.	Up 1-29-30
1-28-30	RGB	Wood still insists on exhorbitant rent.	Up 6-1-30
6-26-30	RNC	Wood wants high rental for this.	Up 12-1-30
11- 8-30	WAH	Leased to Special Site Sign Co. who have built two panels Unilluminated. Wood advises he is receiving better than \$100.00 per year for this.	Up 3-1-31
3- 7-31	RGB	S. S. S. Co. still here; no change.	Up 8-26-31
8-26-31	WAH	O K to pass contact.	Up 12-8-31
11-27-31	WAH	O. K. to pass contact.	Up 8-1-32
9- 1-32	WAH	Check at later date.	

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. E 14th NL 125 E 52nd Ave 170

LEGAL Lot 4 Block Y in Patterson Ranch

LOC.

LEGAL

OWNER V. N. SMITH

ADDRESS

Am't			
Date	Offered	By	Contact Data B4 3TA
8-18-30		JHB	Special Site Sign Co. has had target sign on this location for a year or two and are paying \$4.00 per mo. and painting fence once a year. They have just erected a 25x10' posting panel, illuminated. Up 11-1-30
11-18-30		JHB	Smith advises rental O. K. Up 2-1-31
2-24-31		JHB	Rental O. K. Up 5-1-31
4-20-31		RNC	Smith satisfied with present arrangement. Up 7-9-31
7-11-31		WAH	O. K. to pass contact. Up 11-20-31
12-24-31		WAH	Spec. Site panel still here. Original agreement still in force.
6-18-34		WAH	Situation unchanged. Check at later date. Up 12-10-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. San Pablo & Ocean SW 107x100
 LEGAL Lots 5 & 4 Block 12, Landgren Tract
 LOC.
 LEGAL

OWNER REV. CANTILLON
 ADDRESS 6401 San Pablo Ave. Oakland

Date	Am't Offered	By	Contact Data	A2	4TA
3-25-29		RB	Formerly under lease to Coast @ \$120.00 yr. Structure removed as of 3-13-29.		
4-30-29		HHW	Coast were three mos. behind in rental. Rev. Cantillon acting on the advice of his attorney gave them sufficient notice to pay or remove. As nothing was done he had his janitor cut down the board which is still lying on the property.		Up 7-15-29
7-20-29		WAH	Nothing new on this. Up 11-20-29		

- 10- 5-29 WAH Reverend advises he has leased to Special Site Sign Co. end of September at a rental much in excess of what we pay. Leased for 1 yr. with option of five more.
Up 11-28-29
- 10- 8-29 WAH H. H. W. talked with Cantillon and learns that S. S. S. Co. is paying \$120.00 per year for this corner.
Up 12-27-29
- 2- 4-30 JHB 2 - 12½x 47 Ill. City Bulletins now built on this property.
Up 7-1-30
- 8- 6-30 JHB Rental coming in O. K. Up 2-1-31
- 4-29-31 RGB S. S. S. Co. still here. Situation unchanged Up 10-28-31
- 11-18-31 WAH O. K. to pass contact. Up 6-17-32
- 7- 5-32 WAH Special Site still maintaining their dierectional signs here for Ashby Furniture Co. Check at later date.
Up 2-1-32

[On back]:

Am't			
Date	Offered	By	Contact Data
2-10-33	WAH		Check at later date.
6-18-34	WAH		Situation unchanged. Check at later date Up 12-10-34

[Crest]

Foster and Kleiser
COMPANY

CITY OAKLAND CLASS. HWY LEASE NO.

LOC San Pablo Ave. W. L. opposite Sierra Ave.
145'

LEGAL Lots 18-22 Block 33 - Spaulding's Richmond
Pullman Townsite

LOC.

LEGAL

OWNER C. H. and Mary Meyers
ADDRESS 818 Pomona Ave. N. Berkeley

		Am't			
Date	Offered	By	Contact Data	B2	4TA
11- 5-29		RW	Under lease to Special Site Sign Co. 1 - 12 x 93 Hwy (Western Auto) Lease expires 12-8-29.		
			Mrs. M. will disclose am't of rent-but will consider an offer from F & K		
12- 5-29		RW	Mr. M states S. S. S. paying \$55.00 yr. lease Up 12-31-29 Will renew unless offered more. Wants illuminated Hwy built. Ap-		

pealed to Mr. Meyers to have structure removed acc't its enormous size in front of school. Mr. M. interested only in getting as much income as possible to meet taxes
Up 1-5-30

3-29-30	RW	Mr. M. will consider leasing for increased rental	Up 6-20-30
6-27-30	RW	Bring up nearer expiration date.	Up 10-10-30
10-15-30	RW	Mrs. M. will consider leasing only on basis of more rent. S. S. S. still paying \$55.00.	Up 12-1-30
12- 5-30	RW	Space undesirable. Too close to school.	Up 4-20-31
4-27-31	RW	S. S. S. structure still on property.	Up 8-10-31
9-17-31	RW	This bulletin bearing copy of Ambassador Hotel still on location.	Up 12-29-31
4-25-32	RW	Lease still holds.	Up 12-10-32

[On back]:

	Am't		
Date	Offered	By	Contact Data
12-14-32		WAH	Check at later date.

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

7th NL 192.25 W Kirkham 25x148
 LOC. ~~7th NL 199' W Kirkham 25'~~
 LEGAL (metes & bounds)
 LOC.
 LEGAL INTER-CITY FINANCE CORP OF ALA-
 MEDA COUNTY, C/o Merc. Mtge Co.
 1440 Broadway, Oakland

OWNER STEVE RITTER
~~INTER CITY FINANCE CORP.~~
~~INTER-CITY FINANCE CORP.~~

ADDRESS ~~1378 - 7th St. Oakland~~
 C/o Merc. Mortgage Co. ~~1440 Broadway~~
~~3627 San Pablo Avenue, Oakland, Calif.~~

Am't					
Date	Offered	By	Contact Data	B4	3TA
			Under lease to Special Site S. Co.		
			5 yrs from 7-1-28 @ \$14.00 yr		
			Ann.		
7-13-28		HHW	Special Site Co. have had under		
			lease and converted a target sign		
			here to an Illuminated paint B. u.		
			(Post. construction). Have good		
			lease.		

- 8-15-28 HHW Tenant moved out. Owner of adjoining bldg says on account of panel obstructing windows.
Up 9-10-28
- 1-16-29 JHB Mr. Ritter says rental coming in O. K.
Up 5-1-29
- 5- 1-29 HHW Lease O. K. Rental O. K.
Up 9-10-29
- 9-15-29 JHB Same conditions exist here.
Up 3-1-30
- 3-24-30 JHB Rental being paid regularly.
Up 9-1-30
- 9-24-30 JHB Rental O. K. No change in situation.
Up 9-1-30
- 11- 8-30 JHB Ritter still owns property. No change.
Up 3-15-31
- 4-28-31 JHB No change here; Rental O. K.
Up 10-1-31
- 11-27-31 RNC Ritter still owner of this property.
Up 4-1-32
- 5- 1-32 WAH Check at later date. Up 11-20-32
- 12- 1-32 WaH Check at later date.
- 5- 5-33 NEB Thos Bros report property sold by Merc. Mtg. Co. to Inter-City Finance Corp.

[On back]:

Am't			
Date	Offered	By	Contact Data
6-22-33		RNC	I. C. F. C. advise S. S. S. have paid no rental on this.
10- 3-33		RNC	Rental received on this by I. C. F. C. Up 12-25-33
1-12-34		WAH	Special Site maintaining illuminated panel here. Up 8-20-34
9-17-34		RNC	Mercantile Mortgage Co. advises rental being received on this Up 2-17-35

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS HWY LEASE NO.

LOC. . . Foothill Blvd RS 8/10 Mi E. Co. Hosp. Rd.
~~Foothill Blvd RS 7 Mi E. Castro Valley Rd.~~

LEGAL

LOC.

LEGAL

OWNER VARGAS
MR. PERINE

ADDRESS Premises
152 Larchwood Place, Riverside, Calif.

Date	Am't Offered	By	Contact Data	B2	4TA
			Under lease to Special Site Sign Co.		
11- 5-28		LG	Several calls. No contact.		
3- 2-29		RW	Not at home.		
5-31-29		RW	Numerous calls. Owner never at home.		Up 6-25-29
7- 9-29		RW	Vargas not owner. See Co. records.		
12-16-29		RW	Letter to Los Angeles office requesting contact of owner.		Up 1-10-30
8-19-30		RW	Condition unchanged.		Up 3-10-31
3-28-31		RW	Lease still holds.		Up 10-15-31
11-24-31		RW	No change in situation.		Up 5-10-32
5-24-32		RW	Situation same.		Up 12-10-32
12-14-32		WAH	Check at later date.		
6-18-34		WAH	Situation unchanged. Check at later date.		Up 12-10-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS HWY LEASE NO.

 LOC. Mission Rd LS 3-1/10 Mi E of "B" St -
Hayward

LEGAL

LOC.

LEGAL

 OWNER CHRIS NICHOLSEN

ADDRESS Hayward

	Am't				
Date	Offered	By	Contact Data	B2	4TA
			Under lease to Special Site Sign Co. @ \$12.00 yr.		
11- 5-28		LG	Mr. NicholSEN getting only \$12.00 yr. Tenant, Mr. Dias, wants rent. At present getting rental of \$5.00 each for small signs.		
5-17-29		RW	Traffic on this road very light acct new Alvarado Hwy. Locations plentiful.		Up 11-20-29
12-26-29		RW	Mr. Dias states S. S. S. lease up in Sept. 1930. Rent pd.		Up 6-10-30
9-25-30		RW	Mr. D. says S. S. S. may continue.		Up 11-20-30

12-10-30	RW	Numerous calls; unable to see Mr. Dias.
1-29-31	RW	S. S. S. pd. for another year at \$12.00. Up 7-10-31
9-22-31	RW	Structure still on property. Up 12-20-31
12-24-31	WAH	Situation unchanged here.

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. Market & 28th NW 75x152

LEGAL

LOC.

LEGAL

OWNER ADDRESS

Am't

Date	Offered	By	Contact Data	B4	4TA
10-30-31		WAH	Under lease to Special Site Sign Company. 1 Unill B P erected.		Up 11-10-33
12- 5-33		WAH	Special Site still maintaining panel.		Up 11-1-34
6-18-34		WAH	Situation unchanged. Check at later date.		Up 12-10-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

 LOC. San Pablo & 60th SE - N Wall
 LEGAL Westerly 138' of lots 1 & 2, Block 6 in Butler
 Tract (Amended Map)

 LOC.
 LEGAL

 OWNER LAGORIO BROS
 ARGENTINA LAGORIO

 ADDRESS ~~5932~~ San Pablo Ave.
 105-61st Street, Oakland, Calif.

	Am't			
Date	Offered	By	Contact Data	B4 ITA

Under lease to Special Site S. Co.
 10 yrs from 8-24-27 @ \$36.00 yr
 S/A

3- 6-29	HHW	Lease recorded by King	12-24-27.	
6- 7-29	JHB	Lagorio says plans for wrecking bldg. very indefinite.	Up 9-1-29	
9- 5-29	RGB	King's lease good until bldg is wrecked. Lagorio does not intend building for some time.		

Up 11-20-29

- 12- 2-29 RGB No change. King has good lease.
Up 2-15-30
- 2-20-30 RGB Same situation. S. S. S. has lease
till bldg. is wrecked. Up 5-4-30
- 5-10-30 RGB No change S. S. S. Co. lease still
good. Up 7-24-30
- 8- 6-30 RGB S. S. S. Co. board still here; no
change. Up 10-24-30
- 11- 6-30 RHB Conditions unchanged.
Up 1-25-31
- 1-30-31 RGB Situation unchanged. S. S. S. Co.
still control Up 4-7-31
- 4-10-31 RGB S. S. S. Co. still here; no change.
Up 6-23-31
- 7- 5-31 WAH O. K. to pass contact. Up 9-24-31
- 10- 1-31 RNC Owner advises rental due 7-24-31
has not been paid on this location.
Up 12-18-31
- 1- 1-32 RNC Lagorio Bros. advises rental has
been paid here. Up 3-20-32
- 3-29-32 RNC Lagorio advises rental has been
paid. Everything O. K. here.
Up 6-7-32
- 6- 8-32 WAH O. K. to pass contact. Up 7-10-32

[In red]: 1414-56—#3.

[On back]:

Date	Am't Offered	By	Contact Data
			Up 11-20-32
12- 6-32		RNC	Rental paid on this satisfactorily. Up 2-20-33
3-14-33		RNC	S. S. S. still here. No change. Up 6-1-33
6-23-33		RNC	Rental coming in O. K. Up 9-12-33 Up 11-29-33
12- 8-33		RNC	Lagorio advises this lease satisfactory. Rental being paid here. Up 3-1-34
3-29-34		RNC	Lagorio receiving rental on this. See later. Up 6-17-34
6-11-34		RNC	Lagorio advises rental paid OK on this. Up 9-1-34
9- 6-34		RNC	Mrs. Lagorio advises receiving rental satisfactorily here. Up 11-26-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. HWY LEASE NO.

LOC. Dublin Canyon Hwy LS 3-4/10 Mi S of
Altamont

LEGAL

LOC.

LEGAL

OWNER JOHN FLYNN ADDRESS Premises

	Am't			
Date	Offered	By	Contact Data B2	4TA
7-29-31		RW	Under lease to Special Site Sign Co from 7-1-31 1-12x40 Unill Hwy adv. Wm. Taylor Hotel.	
9-22-31		RW	Rent paid to July 1st, 1932.	Up 6-20-32
7-21-32		RW	Bring up.	Up 10-20-32
12- 8-32		WAH	Check at later date.	

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. Louise WL 100' N 32nd 30'

LEGAL Lot A Block 595

LOC.

LEGAL

OWNER SPECIAL SITE SIGN CO.

ADDRESS Oakland

		Am't		
Date	Offered	By	Contact Data	B4 4TA
10- 8-26			Special Site Co. owns property.	
4-24-28		HHW	Do not contact this adjoins S. S. S. Co. office.	
10- 5-28		HHW	2 of the above structures are at present being used as paint.	
3- 1-29		HHW	O. K. to pass contact.	Up 9-1-29
8-31-29		WAH	S. S. S. own property; adjoins their plant.	Up 3-1-30
3- 5-30		WAH	No contact possible here; same situation.	Up 12-8-30
12- 3-30		WAH	No contact possible here; same situation.	Up 8-1-31
8-15-31		WAH	O. K. to pass contact.	Up 1-8-32
1- 4-32		WAH	Situation unchanged. No contact required at present.	
2- 8-33		EAD	1 Illum panel changed to an Illum City Bu.	
6-18-34		WAH	Situation unchanged. Check at a later date.	Up 12-10-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS SUR LEASE NO.

LOC. E 14th & 74th NE 79.87x110
 LEGAL Block 3318, Por lots 7 & 8 in Searles Tract
 LOC.
 LEGAL JOHN PERATA
 OWNER S. BLAND
 H. SCHWARTZ
 HENRY NELSON
 620-44th Avenue, Oakland
 ADDRESS ~~239 E 16th St. Oakland~~
 S & G Clothers, ~~459 12th St.~~

	Am't			
Date	Offered	By	Contact Data	B2 3TA

Under lease to Special Site Sign.
Co. @ \$100.-

5-23-27	HHW	Bland has signed two leases with Spec. Site each for 5 yrs. one starting in Sept. 30, 1926 and one 12-15-24. Each lease calls for \$50.00 per year and is on other than adv. form. Turned down \$75.00 mo. for used car market.		
---------	-----	---	--	--

- 9-12-27 HHW Bland must remain in L. A. acct. ill health.
- 5- 7-29 HHW Finally ascertained that Anderson is residing at the residence of Mrs. Bland & while property is in his name she still actually owns same.
- 6- 5-29 NEB Thos Bros. report lots 7 & 8 sold by J L Anderson to Oakland T. I. & G. Co.
- 6-15-29 120.- ED Mrs. Schwartz wants to look up Special Site Co. leases. Said to Call.
- 6-18-29 120.- ED Mr. Schwartz said lease expires in Sept. 1929. Said to call.
Up 6-18-29
- 8-13-29 ED Mr. Schwartz sick; return to office.
Up 8-20-29
- 8-30-29 WAH Schwartz advises on rechecking that he finds SSS lease does not expire until Dec. 1929 & refuses to consider at present. Up 10-10-29
- 10-11-29 ED Mr. Schwartz said to call 11-15-29.
Up 11-15-29
- 11-15-29 ED Mr. Schwartz said Special Site Sign Co. lease expires Dec. 15, 1930.

[On back]:

Date	Am't Offered	By	Contact Data
3-15-30		ED	Said to call 30 days before lease expires. Up 6-1-30
6-13-30		NEB	Thos Bros report this property sold to Henry Nelson
6-20-30		SW	Thos. Bros report this property sold to John Perata.
7-14-30		JHB	Perata's agent, Mr. Penick, requests bid on location. Advises to his knowledge there is no agreement on property. This bid in W. A. H.'s file signed by Penwick. We quoted \$150.00 Yr.
7-24-30		JHB	Perata wants \$180.00. Left A1 with sale & lease rider to be signed. Working E 14th NL 79.87 E 74th 63.87 on basis of \$4.00 mo. Perata sending reg. letter to Sp. S. S. Co. to remove. Up 7-28-30
12-31-30		JHB	Perata requests advice as to how to proceed in matter. Is very much put out at S. S. S. Co. We advised him it would probably be better to continue along with S. S. S. Co. Up 4-1-31

- 6-29-31 RNC Status unchanged here. Let ride.
Up 11-25-31
- 12- 5-31 RNC S. S. S. still maintain structures
here. Up 2-15-32
- 2-17-32 WAH O. K. to pass contact. Up 6-10-32
- 8- 5-32 EAD Special Site have converted one
Unill City Bu to 2 panels of Unill
B P. Location now carries 1
Illum City Bu and 2 panels of
posting. Up 2-5-33
- 2-10-33 WAH Check at later date.
- 2-15-34 WAH Bulletin still being maintained
here. Up 8-1-34
- 6- 5-34 NEB E. A. D. advises Paint Bulletin
changed to 2 Illum B P. Location
now carrying four Illum B P
Up 8-1-34
- 8-14-34 WAH Outgoing panels badly obstructed
by development on opposite corner.
S. S. S. still maintaining.
Up 3-1-35

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

Hopkins SL 61' E 13th Ave 38x50
~~Hopkins SL 59 E 13th Ave 25~~
 LEGAL (metes and bounds) Portion of lot 1 in Cam-
 eron Tract & Portion of lots 5 & 6
 LOC. Block A in New Town of Lynn
 LEGAL

OWNER A. J. FARIA
 ADDRESS 1318 E 34th St., Oakland

Am't		
Date	Offered	By Contact Data B4 1TA 2TA 4TA
2-25-30	RGB	Under lease to Special Site Sign Co. - 1 yr. from 1-31-30. Mrs. Faria refused to reveal amount of rental. (One 25' panel Unill. B. P)
5-22-30	RGB	Same owner. Lease to S. S. S. Co. still in force. Up 12-20-30
8-19-30	RGB	S. S. S. still here. Same owner. Up 2-1-31
2- 4-31	RGB	Same owner ; conditions unchanged. Up 6-23-31
10-20-31	RNC	Mrs. Faria advises S. S. S. have 10 year lease here. Everything O. K. Up 3-1-32

3-16-32	RNC	S. S. S. still here. Faria still owns this.	Up 7-25-32
7-18-32	WAH	Nothing new here.	Up 12-30-32
2- 9-33	RNC	Faria still owns this. SSS still here.	Up 4-25-33
6- 7-33	RNC	Faria still controls and receiving rental O. K.	Up 8-27-33 Up 1-10-34
1-12-34	WAH	Faria advises original agreement with Special Site still prevailing.	Up 3-27-34
5-28-34	RNC	Mrs. Faria advises rental paid O. K. and that lease has several years to run. Probably a ten year lease from 1-31-30 to 1-30-40-	Up 8-17-34

[On back]:

Am't			
Date	Offered	By	Contact Data
8-21-34		ACD	Special Site Sign Co. lease expires Feb. 1, 1939. Paying 30.00 per year. Possibility of sale or leasing for gas station site with corner.
			Up 11-10-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS. SUR LEASE NO.

LOC. Grove WL 119,69 N 36th 53
 LEGAL * Lot 17 Block A in Apgar Tract
 LOC.
 LEGAL
 OWNER MRS. D. FLECK
 ADDRESS 3617 Grove St., Oakland

Am't			
Date	Offered	By	Contact Data B4 2TA ±TA
9-15-30		RNC	Leased to Spec. Site Sign Co.- 8-25-30 @ \$108.00 Yr. 12/A Lo- cation unbuilt at present. Good for two panels of posting. Up 9-22-30
9-27-30		RNC	Two panels built on South side of small store, one panel on North side. Up 12-5-30
12- 9-30		RNC	Mrs. Fleck says everything satis- factory here to date. Up 2-15-31
3- 9-31		RNC	Mrs. Fleck still getting rental O. K. here. Up 5-18-31
5-25-31		WAH	O. K. to pass contact. Up 9-10-31
9-10-31		WAH	O. K. to pass contact. Up 2-27-32
2-29-32		WAH	Check at later date. Up 3-20-32

1778

4- 5-32	RNC	Mrs. Fleck advises rental paid here satisfactorily.	Up 10-1-32 Up 4-1-33
4-16-33	WAH	Check at later date.	
6-18-34	WAH	Situation unchanged. Check at later date.	Up 12-10-34

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS HWY ASSIGNED TO
LEASE NO.

LOC. Tunnel Rd NL 3-3/4 Mi E Tunnel (Contra
Costa Co. Side)

LEGAL

LOC.

LEGAL

OWNER
ADDRESS

Date	Offered	By	Am't	Contact Data	B2
10-15-32				Under lease to Special Site Sign Co. 1-10x30 Illum. Hwy erected, advertising the St. Mark Hotel.	

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 193 Filed 12/28 1934 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Thereupon

CHARLES H. KING

was recalled as a witness on behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION.

BY MR. GLENSOR:

We had a site on the San Francisco-Los Angeles Highway near Redwood City which we leased from Boicelli.

A lease from Ed. Boicelli to Special Site Sign Company, dated March 31, 1918, was thereupon received in evidence and marked Plaintiff's Exhibit 194 in evidence. Said exhibit was thereupon read to the jury.

Plaintiff's Exhibit 194 in evidence was lost or misplaced. In lieu of the exhibit itself, counsel for the respective parties have stipulated that in substance and effect said exhibit was and is a lease from one, Ed Boicelli to Special Site Sign Company, dated March 31, 1918, for an outdoor advertising site on the San Francisco-Los Angeles Highway, near Redwood City, California, for outdoor advertising purposes, at a rental of \$6.00 per year for a term of one year and, at the option of the lessee, for five succeeding years.

(Witness continuing): We built a 10 by 25 foot highway bulletin on this property. It was immediately south of Redwood City and was a good site on the main highway into San Francisco. It was what we called a key location.

(Testimony of Charles H. King)

Two Foster & Kleiser Company office record cards covering the property referred to by the witness were thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibit 194-B in evidence and 194-C in evidence respectively. Said exhibits were thereupon read to the jury.

Plaintiff's Exhibits 194-B and 194-C in evidence were lost or misplaced. In lieu of the exhibits themselves, counsel for the respective parties have stipulated that in substance and effect said Exhibit 194-B was an office record card of Foster and Kleiser Company relating to the property described in Plaintiff's Exhibit 194 in evidence, and containing the following entries and none others:

"4/25/23, secured 10 years from April 25, 1923, at \$5.00. \$22.50 for each sign erected. Form B continuation clause.

"3/28/24, Form A returned. Mrs. Boicelli doesn't wish to continue leasing this property to us. Request personal call.

"4/8/24. Mrs. Boicelli anxious to have us built so she can get larger rental. Turned down several offers on account of our lease. Will try to submit this soon for building.

"12/11/26, built one 12 x 42 highway bulletin (Union Oil). Order cancelled 2/28/27.

"11/15/27, saw Mrs. Boicelli and stated we were endeavoring to build location. O.K.

"12/2/27, built one 12 x 42 highway bulletin (Dunlop Tires, construction ordered cancelled April 4, 1928)"

(Testimony of Charles H. King)

Plaintiff's Exhibit 194-C in evidence was and is an office record card of Foster and Kleiser Company relating to the property described in said Plaintiff's Exhibit 194 in evidence, and contained the following entry and none other:

"5/8/28, built 12 x 42 highway bulletin, (Fageol Motors)."

The said exhibit does not show that that order was ever cancelled.

Witness continuing: We were unable to renew our lease because Ed Boicelli said that Foster & Kleiser had offered more money. I offered more money but he would only give me a year to year agreement, and I believe it was the second year we had to take it down and Foster & Kleiser built it.

MR. CLARK: I move to strike the testimony as to what Boicelli said, on the ground that it is hearsay and incompetent.

THE COURT: Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 179.

Q What was the value of the leasehold?

(Testimony of Charles H. King)

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. It is objected to on the further ground that plaintiff lost nothing, its lease having expired.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 180.

A Referring to my memorandum, defendants' Exhibit QQ for Identification, the value was \$432.

Witness continuing: We had a lease from Thomas Ellison on East 14th Street, 96 feet east of 52nd.

The lease referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 195 in evidence, and is in words and figures as follows to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 195.]

J—1

Cr R.E.M. \$10—

A-1

[Crest]

OAKLAND
SPECIAL SITE SIGN CO.
CALIF.

No.....

City Oakland State California Date Dec - 8 - 1928

In consideration of Sixty Dollars (\$60.00) Dollars per year, payable Six months in advance, the undersigned Lessor hereby leases to Special Site Sign Company, Lessee, the exclusive use of the premises (with free access to and upon same) described as Lot - 6 and 7 - Blk - 2274/6 N. W. Cor of lot 6—on south side of 14th St. Between 52 and 53 Ave—

[Diagram of premises]

situated in the City of Oakland County of Alameda State of Cal for a period of ten years from Dec 10, 1928 for the purpose of erecting and maintaining painted, printed, or illuminated advertising signs, including necessary structures, devices and connections.

In the event said property is improved by erecting thereon a permanent building, this lease shall thereby be terminated; the Lessee shall, upon the return to it of all

(Testimony of Charles H. King)

rent paid for the unexpired term of this lease and upon thirty days' written notice from the Lessor that such permanent improvements are to be made, remove said signs and structures from said property; in the event such improvements shall not be commenced within thirty days after the removal of such signs and structures, the Lessee shall have the right to re-enter said premises and reconstruct said signs and structures.

In the event a portion only of the property is improved by erecting thereon a permanent building, the Lessee has the option of using the remaining portion on the same terms as herein provided except the rental shall be proportionately reduced.

If the view of the property or advertising signs is obstructed, or impaired, or the use of such signs is prevented by law, the Lessee shall have the right to cancel this agreement and receive all rent paid for the unexpired term of this lease, by giving the Lessor notice in writing of such obstruction, impairment, or prevention of use.

In the event a portion only of the view of the property or advertising signs is obstructed, or impaired, the Lessee has the option of using the remaining portion on the same terms as herein provided, except the rental shall be proportionately reduced.

After the term hereof, this lease shall continue in force from year to year unless terminated at the end of such term, or any additional year thereof, upon written notice of termination by the Lessor or Lessee, served not less than thirty (30) days before the end of such term or additional year.

(Testimony of Charles H. King)

The Lessee shall protect and save harmless the Lessor from all damage to persons or property by reason of accidents resulting from the neglect or wilful acts of its agents, employees or workmen in the construction, maintenance, repair or removal of its signs on said premises.

The Lessee is and shall remain the owner of all signs and improvements placed by it on said property and has the right to remove same at any time.

In the event that the Lessee, for the purpose of improving the appearance of said property, shall place or plant gravel, lawns, shrubs or flowers thereon or install water service pipes and fittings for the upkeep of said property, then the Lessee shall at all times be deemed the owner of such gravel, lawns, shrubs, flowers, pipes and fittings and shall have the right to dig up and remove same at any time.

The Lessor represents that he is the $\left. \begin{array}{l} \text{Owner} \\ \text{Tenant} \\ \text{Agent} \end{array} \right\}$ of the premises above described and has the authority to make this lease. The word "Lessor" as herein used shall include and mean "Lessors."

It is expressly understood that the Special Site Sign Company is not bound by any stipulations, representations, or promises not written or printed on this contract. This lease is binding upon the heirs, assigns and successors of both the Lessor and the Lessee.

(Testimony of Charles H. King)

Signed:

Thomas Ellison

Emma B Ellison

Lessors.

5227- East 14th St

Address.

Accepted by SPECIAL SITE SIGN COMPANY,

Lessee.

Per.....

Blocked Mar 10 1929

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 195 Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: We erected our imprint on the location and immediately Foster & Kleiser erected a six-sheet on the adjoining property, spoiling the site for a 24-sheet poster. Our location was in the middle of the block on the south side of East 14th. It was suitable for a 24-sheet illuminated poster panel. It was fairly close in to the business district in Oakland and was a key location. This Foster & Kleiser office record card for East 14th Street south line 96.92 feet east of 52nd 51 feet, Lots 4 and 5, Block C in Linda Park, is for the property adjoining ours on the west.

The office record card referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 195-B in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 195-B.]

§ K

[Crest]

Foster and Kleiser
COMPANY

CITY Oakland CLASS 6 SH LEASE NO. 3515

 LOC. E. 14th SL 96.92' E 52nd 51'
 LEGAL Lots 4 & 5 Block C in Linda Park
 LOC.
 LEGAL

 OWNER LORIS MULLINS
 ADDRESS 5213 E. 14th Street, Oakland, Calif.

Am't			
Date	Offered	By	Contact data
2- 5-29		JHB	10 yrs from 2-5-29 @ 10.00 yr Ann Form A-1 from Loris Mullins (Tenant)
2-19-29		RB	Property reported sold by E. E. Ferrier to R. L. Ticer through Thos. Bros.
2-20-29		JHB	Mrs. Mullins has lease from R. L. Ticer.
1-23-31		JHB	Mrs. Mullins still tenant.

Up 7-1-31

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: After we leased the site we erected our posts and head-board with the Special Site Sign Company imprint on it. Foster & Kleiser erected a six sheet on the adjoining property after we erected our head-boards. As I recall, it was a month or more after we erected our head-boards that the Foster & Kleiser six sheet was erected.

Witness continuing: We never erected a 24-sheet. We gave up the location and got a refund on the rental.

Q What was the value of the location?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 181.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$772.

(Testimony of Charles H. King)

Witness continuing: This property described as East 14th Street south line 45 feet west of 53rd Avenue on Foster & Kleiser's Sheet 15 for the City of Oakland for the month of April, 1929, is our Ellison property.

Mr. Glensor thereupon read into the record the portion of Foster & Kleiser Company's Sheet 15 referred to by the witness. The portion so read is in words and figures as follows, to wit:

"East 14th Street south line 45 feet west of 53rd Avenue. Special Site have had under lease since November, 1928, at \$60.00 a year; not a particular location, same being blocked by one of our 6-sheets and it is questionable whether it will ever accommodate anything larger than a very small bulletin."

Witness continuing: We had a location on the San Francisco-Los Angeles Highway near Salinas which we leased from Van Lue. It was south of Salinas.

A lease from D. T. Van Lue to Special Site Sign Company dated September 22, 1923 was thereupon received in evidence and marked Plaintiff's Exhibit 196 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: After we secured this lease we erected an 8 x 20 Champion Spark Plug sign. Foster & Kleiser built a poster on the adjoining property within 20 feet of this. Our sign was pulled down. I didn't see it done. Foster & Kleiser's sign was erected behind ours. We re-erected our sign in the same place that it was. We received this letter from Mr. Young, manager of the space department of the San Francisco office of Foster & Kleiser, after we re-erected our sign.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 196-B in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 196-B.]

EEE 6

[Crest]

Foster and Kleiser
— COMPANY —
OUTDOOR ADVERTISING

273-295 Valencia Street
Telephone Market 10

San Francisco, Cal.
August 24, 1922

Special Site Sign Company
Oakland
California
Attention Mr. Chas. King

RE: WS State Highway 1/4 Mi South Salinas

Gentlemen:

It has just come to our attention that one of the new CHAMPION SPARK PLUG highway displays has been erected on the highway in such a manner as to very materially cut off the view of our poster panels on the above mentioned location. We have no doubt that this has been done thoughtlessly by your construction crew and we are certain it is without your knowledge. The matter is therefore being brought to your attention as we know this is opposed to your policy.

(Testimony of Charles H. King)

If you will kindly investigate and take the necessary steps to remedy the situation, it will be greatly appreciated.

Very truly yours,

FOSTER AND KLEISER COMPANY

By E D Young

Manager Space Department

VMB

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-B Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: I then wrote a letter to Mr. Van Lue and received a reply. I sent it to Mr. Young and kept a copy of it. This document dated August 30, 1922, is the copy.

MR. GLENSOR: I offer in evidence the document referred to by the witness as Plaintiff's Exhibit 196-C in evidence.

MR. CLARK: That is objected to on the ground that it is hearsay and incompetent.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 182.

(Testimony of Charles H. King)

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 196-C in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 196-C.]

COPY

Salinas, Calif. Aug. 30th, 1922

Mr. C. H. King.

Dear Sir:-

In answer to your letter of August 28th I wish to say that about three years ago I leased to the old Champion Spark Plug Co., the same space your men have the sign on now. At that time I had half of the sign. The other half was on the property of the man who now has the Foster & Kleiser sign. You see they had really two signs one on his property and one on ours. And approaching either way you could read the sign. The next year I also leased to the same Company. But in about six months I noticed after returning home from San Francisco that the Champion signs had been taken down. As I was not at home I cant say who took down the sign. But shortly after the big new sign board of Foster & Kleiser was on the other man's property. Now who ever took down the sign from our place had no right to do so. But as I never heard anything from the Old Company I kept still. I explained all of this to your man

(Testimony of Charles H. King)

when first he came to renew the lease. In fact I cant see what connection the Foster & Kleiser Co., has to do with the sign on our place. As they are many feet apart and owned by different people. Anyway the old Champion sign was here about 1½ years before Foster & Kleiser put up their sign. And even if the other man does lease them his property who ever pulled down the Champion Plug sign on our place had no business to do so with out at lease getting our permission. Hoping this letter will give you the desired information you wish and that everything is O. K. I am,

Respectfully yours,

ANNA VAN LUE. (Mrs. D. T. Van Lue)

Original sent to Foster & Kleiser in our letter of Sept. 1 1922

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-C Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

A letter from Foster & Kleiser Company to Special Site Sign Company dated September 7, 1922 was thereupon received in evidence and marked Plaintiff's Exhibit 196-D in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 196-D.]

EEE 4

[Crest]

Foster and Kleiser
—COMPANY—

OUTDOOR ADVERTISING
273-295 Valencia Street
Telephone Market 10

San Francisco, Cal.
September 7, 1922

SPECIAL SITE SIGN COMPANY

Oakland, California

Attention Mr. Chas. King

RE: Property South Salinas.

Gentlemen:

Referring to your letter of September 1st, while it is true that the Spark Plug sign was there first, at the time we built our posting structures this sign was but a small target and did not impair the view of our posting to any appreciable extent. We did not feel that a large sign would be constructed and therefore erected our structure.

(Testimony of Charles H. King)

Although the Spark Plug sign was actually there first, by erecting the large display, we have been built out and we are again placing the matter before you.

As for the inference of Mrs. Van Lue that we disturbed the signs on her property, we know nothing of the matter and if we had removed them, we would acknowledge it.

Very truly yours,

FOSTER AND KLEISER COMPANY

By E D Young

Manager Space Department

EDY:b

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-D. Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

A letter from Foster & Kleiser Company to Special Site Sign Company dated October 5, 1922 was thereupon received in evidence and marked Plaintiff's Exhibit 196-E in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 196-E.]

EEE 3

[Crest]

Foster and Kleiser

— COMPANY

OUTDOOR ADVERTISING

273-295 Valencia Street

Telephone Market 10

San Francisco, Cal.

October 5, 1922

Special Site Sign Company

Oakland, California

Attention Mr. Chas. King

RE: Property South Salinas

Gentlemen:

Referring to our letter of September 7th, will you kindly let us hear further from you in the matter.

Very truly yours,

FOSTER AND KLEISER COMPANY

By E D young

Manager Space Department

EDY :b

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-E. Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

1800

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

A letter from Foster & Kleiser Company to Special Site Sign Company dated October 31, 1922 was thereupon received in evidence and marked Plaintiff's Exhibit 196-G in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 196-G.]

EEE 1

[Crest]

Foster and Kleiser
— COMPANY —
OUTDOOR ADVERTISING
273-295 Valencia Street
Telephone Market 10

San Francisco, Cal.
October 31, 1922

Special Site Sign Company,
Oakland, California.

Attention Mr. King

RE: Champion Spark Plug location near Salinas.

Gentlemen:

This morning our field man covering the Salinas territory was in the office and the writer took up the matter of moving your sign at this point. From the description of the property and the structure as now located, I have

(Testimony of Charles H. King)

concluded that it will be best to take down our poster boards and have them moved closer to town. The location will be secured and work attended to within the near future.

We desire to thank you, however, for your offer to cooperate with us in this matter.

Very truly yours,

FOSTER AND KLEISER COMPANY

By E D Young

Manager Space Department

EJ

C. H. K.

SAN FRANCISCO BRANCH

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-G Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: I wrote the original of this letter dated October 9, 1922 and mailed it to Foster & Kleiser.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 196-F in evidence, and is in words and figures as follows, to-wit:

1802

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 196-F.]

EEE 2

October 9th, 1922.

Foster & Kleiser Co.,
No. 273 Valencia St.,
San Francisco,
Calif.

Attention Mr. E. D. Young

Gentlemen:—

In response to your letter of Oct. 5th, 1922, we will make you the following proposition:—

You secure a satisfactory five year lease for the Special Site Sign Company from the property owner in a location as good as the one our Champion Spark Plug display now occupies on the Van Lue property, and move this display to the new location, erecting the same in a workmanlike manner, it will be satisfactory to this Company.

Lease on new location to be paid for one year in advance and not to exceed \$10.00 per year. When this work is done in a satisfactory manner we will assign the Van Lue lease which we now hold to you.

(Testimony of Charles H. King)

We will consider this letter our agreement and upon acknowledgment of your receipt of same you may proceed with the work.

Yours very truly,

SPECIAL SITE SIGN COMPANY.

By

General Manager.

CHK:H

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-F. Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: Van Lue was the sexton of the cemetery and in possession of it. I did not have any contract with the owner and never saw him.

These Foster & Kleiser office record cards covering property described as San Francisco-Los Angeles Highway, right side 5/10 mile south of city limits of Salinas is on the Van Lue property.

Two Foster & Kleiser Company's office record cards referred to by the witness were thereupon received in evidence, read to the jury and marked Plaintiff's Exhibits 196-H and 196-I in evidence, respectively. Said Plaintiff's Exhibit 196-H in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 196-H.]

[Crest]

Foster and Kleiser
COMPANY

CITY S. F. CLASS Hwy. LEASE NO. 7993

LOC. S. F. L. A. Hwy. RS 3/10 Mi S City Lmts.
Salinas

LEGAL (NW Cor Romie Lane)

LOC. S. F.-L. A. Hwy. & Romie Lane N W
300x298 - SalinasLEGAL NW Cor. S. F.-L. A. Hwy. Route 101, &
Romie Lane (See lease)OWNER Fred W. Jansen, Trustee of Alisal Lodge
#163 I. O. O. F. & Rob't G. Ford, Trustee
Alisal Lodge #163 I. O. O. F. Fred W.
Jansen & Rob't. G. Ford, TrusteesADDRESS 147 W. Alisal St. Salinas, Calif.
Salinas, Calif.

Am't

Date Offered By

Contact Data

(Old Card in Transfer File)

*2/ 7/29 WAM 3 yrs. from 5/20/29 @ \$25.00
yr. - Ann Form A-1 from Robert
Forte and Fred Jansen, Trustees
of I. O. O. F. Lodge. (Non-Com-
munity)

(Testimony of Charles H. King)

*3/25/32 WAM 3 Yrs. from 5/20/32 @ \$25.00
yr. Ann Form A1 from Alisal
Lodge #163, I. O. O. F. (Non-
community) -3C
Mr. Barry advised 3C.

6/26/33 LWC Letter to Jansen asking permis-
sion to build add'l. adv. struc. and
will inc. rental to \$50.00 yr. for
balance of term of lease.

Up 7/15/33

Rental @ \$50.00 yr. to commence
7/20/33.

Up 1/1/34

Up 4/1/35 ~~Up 5/1/34~~

*These entries written in red.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-H Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Plaintiff's Exhibit 196-I in evidence is in words and
figures as follows, to-wit:

1806

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 196-I.]

[Crest]

Foster and Kleiser
COMPANY

LOCATION S.F.-L.A. Hwy. RS 6/10 Mi S City Lmts.
Salinas (NW Cor. Romier Lane)

LEGAL

OWNER ~~B. M. Hestorff~~, Fred W. Jansen, Trustee
of Alisal Lodge #163 I. O. O. F.

OR

TENANT

ADDRESS Salinas, Calif. IOOF Cemetery Ass'n.
147 W Alisal St., Salinas

LEASE NO. 7993

CITY S. F.

CLASS. Hwy.

PHONE

[Written in red]: TRANSFER FILE

Amt.

Date Offered By

Remarks

5/14/26 EHW 3 yrs. from 5/20/26 @ \$25.00 yr.
Ann. Form A-1 from B. M.
Hestorff, Secty.

(Testimony of Charles H. King)

- 7/10/26 VM Bld. 1-12½x42 Hwy. Bull. (Coast
Valley Gas & Elect. Co.)
- *2/ 7/29 WAM 3 yrs. from 5/20/29 @ \$25.00 yr.
- Ann Form A-1 from Robert
Forte and Fred Jansen, Trustees
of I. O. O. F. Lodge. (Non-Com-
munity)

[Written in red]: SEE NEW CARD MADE UP

*This entry written in red ink.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-I Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Witness continuing: I received this letter dated May
8, 1925 from Van Lue.

The letter referred to by the witness was thereupon
received in evidence and marked Plaintiff's Exhibit 196-J
in evidence, and is in words and figures as follows, to-wit:

1808

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 196-J.]

Salinas, May 8- 1925.

Special Site Sign Co.

Mr. Chas. H. King.

Dear Sir.

Will you kindly remove Champion Spark Plug. sign as we have been given notice that it must be removed by May 15th I am very sorry that this must be done. This sign is erected on Highway South of Salinas opposite I. O. O. F. Cemetery. Please be kind enough to send your men before the 15th of May Thanking you in advance and I am sure sorry Monterey Co. insists on being so picturesque. I am

Sincerely Yours

D. T. Van Lue
per A. V. L.

Box 44.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-J. Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: This copy of a letter dated May 12, 1925 is a copy of my reply.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 196-K in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 196-K.]

May 12, 1925.

D. T. Van Lue,
P. O. Box 44,
Salinas, Calif.

Dear Sir:

We are in receipt of your letter of May 8th and are very surprised to hear of the notice given you for the removal of the sign as Monterey County has nothing whatever to do with signs erected on private property.

We are, therefore, enclosing check in payment of rental for coming year and trust you will not let anyone deceive you into believing the County can order the sign down.

Yours very truly,

SPECIAL SITE SIGN CO.,

BY

GENERAL MANAGER.

CHK-MSM

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 196-K Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: Our sign as re-erected was torn down. I do not know of my own knowledge who did it. We never re-erected it. I don't recall whether Foster & Kleiser built on the same property that I was on. Their sign did not remain on the other property. They took it away shortly after I received the letter from Mr. Young dated October 31, 1922.

Q What was the value of the Van Lue lease?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his testimony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses he could have received from it. I further object to any testimony on damages with reference to this location on the ground that it is barred by the statute of limitations, and on the further ground that Foster & Kleiser Company had nothing at all to do with the loss of the location by the Special Site Sign Company.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 183.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$552.

(Testimony of Charles H. King)

(Witness continuing:)

We had a location known as the Gross location at San Pablo and Panama, Oakland. We built a board on it. Foster & Kleiser built on the adjoining property and blocked the view to the board. After the build-out I rang up Mr. Thompson, the assistant general manager, and asked him why they built out our boards and I told him we never built out theirs. He said, "Why don't you?" I asked him if he thought that was the right thing to do and he said to go ahead and build out their boards if we wanted to. I took our board down and built it in front of theirs. They then took their board away. I had no further conversation with Mr. Thompson.

The Repetto property was on the San Francisco-Los Angeles Highway opposite Tanforan. We leased it from Repetto and built a structure there in 1929. The Piedemonte property was the property adjoining on the north. I had an agreement with Piedemonte which was written on a check which I gave him. I don't know where the check is. I had an agreement with him to allow us to cut the shrubs on his property and keep the view open. For that agreement I was to pay him \$20 annually. I paid him and we had the shrubs cut.

Foster & Kleiser Company's office record card covering the Piedemonte property was thereupon received in evidence and marked Plaintiff's Exhibit 198 in evidence, and is in words and figures as follows, to-wit:

1812

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT NO. 198.]

[Crest]

Foster and Kleiser
COMPANY

CITY S. F. CLASS. Hwy. LEASE NO. San Bruno

LOC. S. F.-L. A. Hwy. RS opp. Tanforan (Bet. Zaro
prop. and Repetto Prop.)

LEGAL

LOC.

LEGAL

OWNER G. Piedemonte

ADDRESS on premises

		Am't		
Date	Offered	By	Contact Data	BI 4TA

7/16/29		KGH	Mr. Piedemonte has leased the northerly 72' of his prop. to Mr. Peterson, will not consent to any sign on balance as it would be in front of his house.	
---------	--	-----	---	--

11/ 4/29		KGH	Piedemonte will not allow any signs on property will not consider any sort of protection permit.	
----------	--	-----	--	--

Up 2/1/30

Spec. Site Sign Co. maintain +
Hwy. Ill. 12 1/2 x 12 here.

(Testimony of Charles H. King)

6/16/30	KGH	Not advisable to contact at present.	Up 8/15/30
1/29/31	JFW	Bring up 4/1/31.	Up 2/1/31
4/ 1/31	JFW	Up 7/1/31	Up 4/1/31

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 198 Filed 1/3 1935 R. S. Zimmerman,
 Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: Brush was piled up in front of our sign on two occasions. The first time we tore it down and it was reerected. The second time Westbrook and I burned it down. Piedemonte erected the obstructions. I had a conversation with him as to why he did it. Piedemonte was the owner of the adjoining property. That was on the west side of the highway.

We leased a site at 4325 San Pablo Avenue, Emeryville, from one Carter. I searched for the lease but I don't know where it is. Our rental was \$7.50 annually. We built a 5 x 12 illuminated de luxe bulletin advertising the Touraine Hotel. We were on the property prior to the time of this order of the Hotel Touraine which is dated December 4, 1926. The term of our lease was from October 9, 1923, to October 9, 1928. We had our structures on the property with copy of one or another advertiser during practically all of that period.

(Testimony of Charles H. King)

There was thereupon offered and received in evidence a check dated October 9, 1926, from Special Site Sign Company to Mrs. J. D. Carter as Plaintiff's Exhibit 199 B, which was and is in the words and figures following.

[PLAINTIFF'S EXHIBIT NO. 199-B.]

[Check]

SPECIAL SITE SIGN CO.

3225 Louise Street

No. 8217

Oakland, California Oct 9-1926 192.....

Pay to the Order of

Mrs. J. D. Carter.....\$7.50

Insured Seven Dollars Fifty Cents Dollars

SPECIAL SITE SIGN CO.

Charles H King Jr.

Genl. Manager

To

CENTRAL NATIONAL BANK

90-4 Oakland, California

This Check is Issued in Payment of Items as Per Statement Following. The Endorsement of Payee on Back Will Constitute a Receipt in Full.

Hotel Vernon Sign location Rental 10/9/26 to 10/9/27.

[Emblem]: Central National Bank of Oakland, Cal.

[Perforated]: Paid 10-14-26 90-4

[Stamped]: F. E. B. No. 1018

(Testimony of Charles H. King)

[On Back]:

[Endorsed]: Mrs J. D. Carter 4325 San Pablo Ave
B B Turner

[Stamped]:

7 Pay to the Order of 7 Any Bank, Banker or Trust
Co. All Prior Endorsements Guaranteed Oct 18 1926
Emeryville Branch American Bank Emeryville, Cal.

Paid Through Clearing House Oct 14 1926 Broadway
Branch American Bank Oakland, Calif. 90-3

No. 5673-C Special Site Foster & Kleiser vs.
Plf. Exhibit No. 199-B Filed 1/3 1935 R. S. Zimmer-
man, Clerk By Cross Deputy Clerk.

Foster & Kleiser Company's office record card covering
the property referred to by the witness was thereupon
received in evidence and marked Plaintiff's Exhibit 199-C
in evidence, and is in words and figures as follows, to-wit:

1816

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 199-C.]

[Crest]

Foster and Kleiser
COMPANY

278'

LOCATION San Pablo WL. ~~36 S.~~ 45th 85'

LEGAL ~~Blk 1028 no lot #~~ Kellersberger's Survey
of V. & D. Peralta Rancho

OWNER

OR

TENANT ~~H. VISCHER~~ HUBERT VISCHER,
owner

ADDRESS 2439 Webster St.

AGENT

LEASE NO. 3462

CITY Emeryville

CLASS. ~~SUR~~ S/B SUR
PHONE

Amt.				
Date	Offered	By	#1444 - Vol. 3	Remarks
				EXTRA TIGHT
1-25-27	\$20.	PWY	Vischer handler affairs of tenant who is invalid. Will see re exclusive privileges and let us know	Up 1-28-27
2- 2-27		PWY	V. not had chance see tenant. Will find out if Special Site have lease and advise about 10 days.	Up 2-12-27

(Testimony of Charles H. King)

4-11-27	PWY	Vischer in ill health-not had chance see tenant. Thinks will not consider at rental quoted.	
			Up 5-25-27
6-14-27	WC	Still leased but tenants have moved. Anticipates litigation. Will advise.	Up 8-15-27
8-11-27	WC	Situation remains same. Friendly to F & K	Up 9-1-27
9-24-27	WC	Assign to EAD	Up 10-15-27
10-15-27	ED	Tenant has lease on property.	
			Up 12-1-27
1-31-28	ED	Vischer in ill health	Up 2-15-28
3- 3-28	ED	Said to call.	Up 3-20-28
4-24-28	ED	Deal to be closed.	Up 5-1-28
5- 4-28	ED	Said to call.	Up 5-20-28
6-27-28	ED	Said to call.	Up 7-20-28

[On back]:

	Amt.			
Date	Offered	By		Remarks
7-23-28		ED	Deal for lease to be closed.	
				Up 8-10-28
10-22-28		ED	10 yrs from 10-30-28 @ \$36.00 yr S/A From Hubert Vischer (non-community) Form A-1.	
11-17-32	20.-	RNC	Vischer wants time to consider reduction on this.	Up 11-24-32
11-28-32		RNC	H. V. advises he must get in touch with partner reg. this.	Up 1-1-33
1- 4-33		RNC	Vischer will do nothing re reduction at present.	Up 3-1-33

(Testimony of Charles H. King)

- 3- 9-33 RNC No change on this. Hold rental.
Up 5-1-33
- 6-24-33 EAD Mr. Vischer will call at office to
 see Mr. Hughes. Up 7-1-33
- 9-27-33 EAD Mr. Vischer will call at office to
 see Mr. Hughes. Hold rental.
Up 10-10-33
- 10-19-33 WAH G. A. H. to call on Vischer within
 next week's time. Hold rent.
Up 11-15-33
- *12-20-33 NEB Supplemental agreement dated
 May 1st, 1933 reducing rental to
 \$25.00 yr S/A effective April
 30th, 1933, and provides for the
 cancellation of our lease in the
 event the property is sold or leased
 for other than advertising pur-
 poses.

*This entry written in red.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 199-C. Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: I received this letter of March 2,
1927 from Mrs. Carter.

The letter referred to by the witness was thereupon
received in evidence and marked Plaintiff's Exhibit 199
in evidence and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 199.]

March 2, 1927.

Special Site Sign Co.—

Dear Sirs:

Please take notice to remove your illuminated sign, Hotel Touraine, on premises, 4325 San Pablo Ave., within five days or same shall be removed by me.

June I. Carter

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 199 Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: We finally removed our sign on the location. It was afterwards built by Foster & Kleiser.

Q What was the value of the location, Mr. King?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and on the ground that it is speculative, indefinite and uncertain, and especially, without foundation from the witness' own formula, in that as I have understood his tes-

(Testimony of Charles H. King)

timony, his formula is based upon his income. Now, it is proposed to show, not an actual income, but an income that he assumes or guesses that he could have received from it.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 184.

A Referring to my memorandum, Defendants' Exhibit QQ for Identification, the value was \$772.

Witness continuing: We had a location known as the P & B Service Station at University Avenue and Grove Street, Berkeley. On this rough pencil sketch property No. 2 is the property that formerly belonged to Mr. Williamson, and Foster & Kleiser had a lease on this property but the lease was cancelled at the time it was converted into an oil station. Property No. 1 was the P & B Service Station. The point where our sign was erected was a driveway. Mr. Williamson owned these three pieces of property and he gave the P & B Service Station an easement over this property as a driveway. That is represented by those dotted lines.

A lease from P & B Service Station to Special Site Sign Company dated October 21, 1929 was thereupon received in evidence as Plaintiff's Exhibit 200 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 200.]

A-1

[Crest]

OAKLAND
SPECIAL SITE SIGN CO.
CALIF.

City Berkeley State California Date Oct 21- 1929

In consideration of twenty four dollars (\$24/00) Dollars per year, payable in advance, the undersigned Lessor hereby leases to Special Site Sign Company, Lessee, the exclusive use of the premises (with free access to and upon same) described as Space for sign privilege immediately west of the west line of the Van Flette & Durkee Service Station—N. W. Cor. of University Ave & Grove St. *Berekeley* situated in the City of Berkeley County of Alameda State of Calif. for a period of ten years from Date of erection, 1929 for the purpose of erecting and maintaining painted, printed, or illuminated advertising signs, including necessary structures, devices and connections.

In the event said property is improved by erecting thereon a permanent building, this lease shall thereby be terminated; the Lessee shall, upon the return to it of all rent paid for the unexpired term of this lease and upon

(Testimony of Charles H. King)

thirty days' written notice from the Lessor that such permanent improvements are to be made, remove said signs and structures from said property; in the event such improvements shall not be commenced within thirty days after the removal of such signs and structures, the Lessee shall have the right to re-enter said premises and reconstruct said signs and structures.

In the event a portion only of the property is improved by erecting thereon a permanent building, the Lessee has the option of using the remaining portion on the same terms as herein provided except the rental shall be proportionately reduced.

If the view of the property or advertising signs is obstructed, or impaired, or the use of such signs is prevented by law, the Lessee shall have the right to cancel this agreement and receive all rent paid for the unexpired term of this lease, by giving the Lessor notice in writing of such obstruction, impairment, or prevention of use.

In the event a portion only of the view of the property or advertising signs is obstructed, or impaired, the Lessee has the option of using the remaining portion on the same terms as herein provided, except the rental shall be proportionately reduced.

After the term hereof, this lease shall continue in force from year to year unless terminated at the end of such

(Testimony of Charles H. King)

term, or any additional year thereof, upon written notice of termination by the Lessor or Lessee, served not less than thirty (30) days before the end of such term or additional year.

The Lessee shall protect and save harmless the Lessor from all damage to persons or property by reason of accidents resulting from the neglect or wilful acts of its agents, employees or workmen in the construction, maintenance, repair or removal of its signs on said premises.

The Lessee is and shall remain the owner of all signs and improvements placed by it on said property and has the right to remove same at any time.

In the event that the Lessee, for the purpose of improving the appearance of said property, shall place or plant gravel, lawns, shrubs or flowers thereon or install water service pipes and fittings for the upkeep of said property, then the Lessee shall at all times be deemed the owner of such gravel, lawns, shrubs, flowers, pipes and fittings and shall have the right to dig up and remove same at any time.

The Lessor represents that he is the $\left\{ \begin{array}{l} \text{OWNER} \\ \text{TENANT} \\ \text{AGENT} \end{array} \right\}$

of the premises above described and has the authority to make this lease. The word "Lessor" as herein used shall include and mean "Lessors."

(Testimony of Charles H. King)

It is expressly understood that the Special Site Sign Company is not bound by any stipulations, representations, or promises not written or printed on this contract. This lease is binding upon the heirs, assigns and successors of both the Lessor and the Lessee.

Accepted by SPECIAL SITE SIGN COMPANY,
Lessee.

Per

Signed:

P & B Service Station
Ch Porter Berkeley
Lessors.

Way
Grove St & Berkeley ^ Calif.
Address.

[Written on back]:

It is further understood and agreed that if this space is needed for any purpose other than adv. this contract is void upon thirty days written notice.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 200 Filed 1/3 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury .

Witness continuing: At the time we took that lease there were no other advertising structures on properties 1, 2 or 3. I did not know anything about any lease or advertising privileges on any one of these three properties. I erected a 10 by 25 foot poster bulletin there. We had the bulletin about two-thirds completed, and George Hughes said he didn't want us to complete the board because he had the property under lease and we would have to remove it. That board was on property No. 1 on the sketch in the driveway. We completed the board and George Hughes rang up and wanted to know what the hell we meant by going ahead and completing the board. I told him I hadn't seen his lease and I knew nothing of it. He invited me down to look at it. I called there and saw a lease signed by Mr. Williamson. I knew that he owned the property and I thought it included that driveway. Mr. Hughes told me it did. On the strength of that I sold the board to Foster & Kleiser. This office record card describing Grove Street west line, 90 feet north of University, is property No. 3.

Foster & Kleiser Company's office record card referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 200-B in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 200-B.]

[Crest]

Foster and Kleiser
COMPANY

University NL 90' W. Grove ~~40x90~~ (a) 50'
 LOCATION ~~Grove WL 90' N. University 160x90~~ (b)
 LEGAL B 2060 L 1 in Hardy Tract

OWNER

OR

TENANT ~~F. F. &~~ L. M. WILLIAMSON

ADDRESS ~~2524~~ Shattuck Ave., Berkeley 2816 Oak
 Knoll Terrace, Berkeley

AGENT

LEASE NO. 2088

CITY Berkeley

CLASS. SUR

PHONE

Amt.			
Date	Offered	By	Remarks
4-6-25		LG	10 yrs. from 4-6-25 @ \$180.00 yr. 12/A Form B from F. F. & L. M. Williamson
8-27-27		WAH	Issued T.D. today after seeing plans for Auto Cleaning Stn. on entire frontage. Hold rental check. Up 8-10-27

(Testimony of Charles H. King)

- 9- 1-27 WAH 10 yrs from 9-6-27 @ 25.00 yr
4/A Form A-1 from L. M. Wil-
liamson (Community) Rental cut
from \$180.00 to \$25.00 a/c T.D.
- 2-24-28 WAH T. D. issued - Auto Wash Co. to
use for driveway. Up 3-15-28
- 3-20-28 WAH Auto Wash Co. working on prop-
erty now. Up 4-25-28
- 6-12-28 WAH Auto Wash Co. (Mr. Porter) says
work will start immediately to
utilize this space. Up 8-1-28
- 8- 1-28 WAH No building here as yet. Expect-
ing to start soon however.
Up 10-1-28
- 10-12-28 WAH Work under way. Should be com-
pleted soon. Up 11-1-28
- 11-16-28 WAH Williamson will talk to tenant and
either allow us to re-enter or re-
duce present rental. See next
week.
- 11-19-28 WAH Rental cut from \$25.00 to 5 per
yr acct unable to build any addi-
tional structures at present. New
lease as follows (over)

[Stamped on face]: CANCELLED

(Testimony of Charles H. King)

Date	Amt. Offered	By	Remarks
11-19-28	WAH		10 yrs from 11-6-28 @ \$5.00 yr Ann. Form A-1 from L. M. Williamson (community.)
11-16-29	WAH		See if panel is Illuminated or not. Up 12-20-29
11-30-29	WAH		Increase rental to \$12.50 acct. illum. panel now here. Increase effective 12-6-29 WAH:
5-31-30	SW		Refund due on lease #2257 being deducted from next check due on this 9-6-30, as per notation on card #2257
8-28-30	WAH		T. D. being issued. Min. golf course going in here. Release being secured, and lease being recorded.
[lease being recorded underscored in red ink.]			CANCEL and make unsecured card. ✓ No refund due.
9- 5-30	WAH		Release secured. Refund referred to above for lease No. 2257 and refund on this lease to be deducted from next check due 11-1-30 on lease No. 1338.

(Testimony of Charles H. King)

8-29-30

SW RECORDED

Structures Removed—Check for
Rebuild or Cancellation WAH
Up 10-15-30
H

[Stamped on face]: CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser Exhibit No. 200-B Filed 1/3 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: The auto wash company referred to on that card is the P & B. I sold my sign on this property No. 1 on the driveway to Foster & Kleiser after Mr. Hughes had shown me what I believed was a lease on the property. I want to correct a statement of mine that we were doing business with Williamson. We were not, we did business with the P & B Service Station. I knew Williamson was the owner of the property. I looked at this lease to Foster & Kleiser. It appeared to include all the property. I don't recall the description. It was such that I concluded it covered all the property. It antedated my lease. This office record card of Foster & Kleiser describing Grove, west line 90 feet north of University, is property No. 1.

The card referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 200-C in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 200-C.]

[Crest]

Foster and Kleiser
COMPANY

CITY Berkeley CLASS. SUR LEASE NO. 3145

LOC. Grove WL 90' N. University 35'

LEGAL Por Plot 1, Blk 2066, Hardy Tract

LOC.

LEGAL

OWNER L. M. WILLIAMSON

ADDRESS 2816 Oak Knoll Terrace, Berkeley

		Am't	
Date	Offered	By	Contact Data
11- 1-27	WAH	10 yrs from 11-1-27 @ 12.50 yr Ann Form A-1 from L. M. Wil- liamson (community.)	
3-28-29	WAH	Contacted Porter, tenant, in effort to obtain his OK to build between his bldg. and station. Refuses as he says this would kill his signs on wall and besides he intends to gravel this and use for parking purposes. Let ride few months as rental paid until 11-1-29 then con-	

(Testimony of Charles H. King)

- tact Porter and Williamson again and if nothing can be built at that time, we will suspend lease with owner. Up 9-1-29
- 9- 4-29 RGB Blethrode, tenant, will not permit signs; says they have right to use property according to terms of their lease. Up 9-25-29
- *9-23-29 RGB 10 Yrs. from 11-1-20 at \$2.00 Yr. Ann. Form A1 from L. M. Williamson, owner, (Community) Williamson has granted reduction in rental on new lease while present tenants use property.
- 9- 5-30 WAH Lease being recorded. Release secured. ~~T. D. issued to remove structures~~ WAH CANCEL and make unsecured card. Bill for unearned rental.
- 9- 4-30 SW RECORDED
Structures Removed—Check for Rebuild or Cancellation
Up 10-15-30
H

[Stamped on face]: CANCELLED

No. 5673-C. Special Site vs. Foster & Kleiser see
Plf Exhibit No. 200-C. Filed 1/3 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

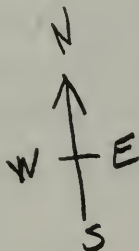
Witness continuing: The Porter referred to on that card owned the P & B Service Station. I don't recall who Blethrode was. We sold our structure to Foster & Kleiser.

The sketch referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 200-D in evidence. A true and correct reproduction of said Plaintiff's Exhibit 200-D in evidence follows:

(Photostat)

BY MR. CLARK:

At the time I got our lease from the P & B people there were no billboards or structures of any kind on the lot marked No. 2 on this sketch. It was an oil station. There were no billboards or structures on the lot marked No. 3. I got the lease on the driveway instead of lots 2 or 3 because the P & B Service Station man did not want anything on No. 3. He said he was going to use it for a parking lot. The driveway was the only place he would allow a sign. The P & B man apparently had something to do with lot No. 3; he said he was going to use it for a parking lot. That lot No. 3 is a very much better place for the billboard than the driveway.



P & B
Service Stn.



①

No. 56734
Special Sale
Boston & Lowell
200-10.
Filed 1/3 1935
S. ZIMMERMAN, Clerk
Boon

Drive way



②

③

90'

University Ave

Grove St.



Handwritten text, possibly a title or label, which is mostly illegible due to fading. It appears to contain several lines of text.



(Testimony of Charles H. King)

BY MR. GLENSOR:

At one time we had a competitor in Oakland known as the Coast Advertising Company. It was an independent company. They had structures on property known as the northwest corner of Broadway and Moss Avenue. That was a key location, about the best in Oakland. They had at least five structures on it. A man by the name of Gruner owned the property.

Mr. Glensor thereupon read into the record a portion of Foster & Kleiser Company's Sheet 15, being an inventory of competing plants, for the Oakland Branch for the month of March, 1927, the portion so read being in words and figures as follows, to-wit:

"Broadway and Moss, northwest. This location under lease to us. Structures not removed as yet."

A letter to William Gruener to Foster & Kleiser Company dated March 2, 1927, being a portion of Plaintiff's Exhibit 64 for Identification, was thereupon received in evidence and marked Plaintiff's Exhibit 201 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 201.]

Oakland, California.

March 2d, 1927.

Foster and Kleiser Company,
Oakland, California.

Gentlemen:

Referring to that certain lease heretofore executed between yourselves, myself and Louise P. Gruener, under the terms of which there was granted to you advertising rights and privileges on the properties described in Schedules "A" and "B" of said lease, I agree to tear down or remove or cause to be torn down or removed all advertising structures now located upon the properties referred to in Schedule "A" and Schedule "B" in order that no controversy or legal entanglement might arise between yourselves and the persons now owning such advertising structures.

Upon such removal of said advertising structures or the tearing down of the same and removal thereof to positions which will not interfere with the erection of advertising structures by you, the \$1250.00 rental rate shall take effect.

Very truly yours,

F. W. Gennry

[Stamped on face]: Mgr. Asst. Mgr. Sales Received Mar 4 - 1927 Foster & Kleiser Co. Oakland Branch Lease

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 201 Filed 1/3 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: The Coast Advertising Company went out of business in 1927. They went into bankruptcy and were purchased by Foster & Kleiser.

At the close of the session this morning (January 3, 1935), you read the letter from Gruener to Foster and Kleiser Company with respect to one of the Coast locations, and that is the location at the northwest corner of Broadway and Moss. That is the Gruener property.

We once had a sign on some property at the Tuolumne River bridge at Modesto. I worked there for several weeks to get a location and I finally found a small parcel of property that was isolated by the railroad right of way and the highway right of way. I searched the records and couldn't find an owner. I erected two bulletins on the property and put our imprint on the boards, hoping that whoever owned the property would get in touch with us and we would be able to negotiate a lease there. Our boards were torn down and Foster & Kleiser erected their boards on the property.

Since I went into the business in 1916 I have built about 2,000 boards. I now have approximately 200.

I have examined 30 Foster & Kleiser office record cards. They covered locations which I once had, and, as I recall, some of the cards cover locations I have now. I have been present in court all except one day and heard the testimony that has gone in, and I have in mind the various locations that we have lost and the testimony that I have given about the signs that have been removed, lost, torn down, built out, etc. The loss

(Testimony of Charles H. King)

of those locations has had this effect upon my business: We have been unable to renew our advertisers. They have become disgusted because of so many changes of locations that I have been unable to renew them.

The statement from my books shows that in 1918 we had a gross income of \$23,962.11 and that in 1919 we made an increase of 59.7 per cent over 1918; in 1920 we made an increase of 10.8 per cent over 1919; and in 1921 we made an increase of 24.2 per cent over 1920, or an average increase from 1919 to 1921, inclusive, of 31.6 per cent.

Q Now, having those figures in mind, I want to ask you a question, a hypothetical question. Assuming that in 1922 Foster & Kleiser Company, in competition with the Special Site Sign Company and other independents on the Pacific Coast, had not issued instructions to all branch managers to make up cards representing or covering each location held by the competitor, and had not at that time issued instructions to the effect that "We must do everything within our power to secure all competitive locations, whether we can use or need such locations or not. The only way to protect our investment in this business is to make our competitors move and keep moving;" which instructions were repeated in substance and effect in 1924, and which remained in effect until they were specifically rescinded by Bulletin No. 550-A, not yet in evidence, but which was issued shortly after March 15, 1931; assume also that during that period, or at least from 1920, Foster & Kleiser had not controlled over 90 per cent of the outdoor advertising

(Testimony of Charles H. King)

business in the territory and controlled, through leaseholds, more than 90 per cent of the valuable advertising locations, and through its ownership of franchises in the Poster Advertising Association and the Outdoor Advertising Association, which were afterwards merged into one association, obtained all of the national business created as the result of those organizations to be placed in their field, that is, on the Pacific Coast; that these franchises which were referred to in the last sentence are described as follows: "Speaking of franchises, leaseholds and national solicitorships, while this is intangible in value, it is at the same time the very crux of the business and the most valuable asset, and it represents definitely that it has been built up over a long period of years at great expense, and without which the company could not operate for each of the 507 cities and towns in California, Oregon and Washington in which the company operates, it holds a franchise from the Poster Advertising Association and the Outdoor Advertising Association; through these franchises it receives from the Associations all the business which is created within them in the Coast field; this is an exclusive privilege which brings to Foster & Kleiser the big national accounts from the eastern field; assume that pursuant to the instructions contained in the bulletin, which is referred to as being issued in 1922 and 1924 respectively, with respect to contacting competitors' leaseholds and securing them, whether Foster & Kleiser leased them or not; that Foster & Kleiser had not made 34,822 contacts on the competitors' property; assume that from 1919 to 1930, inclusive, Foster & Kleiser had not acquired 97

(Testimony of Charles H. King)

independent companies operating in 342 cities on the Pacific Coast; also assume that the Special Site Sign Company had not lost upwards of 60 locations through various activities of Foster & Kleiser, of which you have testified, and their agents, and further assume that the independent companies, including the Special Site Sign Company, had been able to obtain national accounts prior to March 13, 1931, freely, that is, in free and open competition with the Association plants owned by Foster & Kleiser franchise plants, and had also been permitted or could have participated in the business developed by the National Outdoor Advertising Bureau, through the agencies that were members of and composed that bureau; and further assume that Foster & Kleiser had not taken, at the time of the audit, when they purchased some stock in your company, a list of the expirations of your advertising contracts and also a list of your leaseholds; what, in your opinion, would have been the average growth in gross income of the Special Site Sign Company from 1919 to 1934, inclusive, using 1918 as a base figure?

MR. STERRY: That is objected to on the ground that it is incompetent, irrelevant and immaterial, that it is speculative and conjectural and that there is no proper foundation laid for it. It is speculative especially in that portion thereof which asks the witness to assume what would have happened if he had been able to have gotten business from the Bureau and their agents. The question further lacks foundation in that there is no evidence that Foster & Kleiser Company had 90 per cent of the leases and 90 per cent of the desirable advertising sites, and the same percentage of national business from 1922 or

(Testimony of Charles H. King)

1923 on. It is further without foundation in that there is no evidence to show that the plaintiff has not been permitted to participate in the business created by the National Outdoor Advertising Bureau, and if there were, there is no evidence that it did not participate in that business because of any fault of Foster & Kleiser's. It is further speculative in that it does not take into consideration the competition of other competitors and other elements.

THE COURT: Let the objection be overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 185.

A If we would have been free of the conditions referred to by you in your question referred to, free to operate, we would, in my opinion, have made a gross increase of 31.6 per cent from 1921 to 1930.

Witness continuing: By gross increase I mean an increase in the gross business per year. In other words, if in 1920 we did over \$100,000 worth of business, in 1921 we would have done over \$131,000, and in 1922 we would have done \$131,000 multiplied by 31.6 per cent, and so on down to 1930. We felt the depression during the year 1931. In my opinion, our average gross income over the entire period down to and including 1934 would have been 20 per cent annually straight through regardless of the depression. We would have made an average annual increase of 31.6 per cent up to 1930 but taking a period from the end of 1918 straight through the

(Testimony of Charles H. King)

depression we would have had a 20 per cent increase. My first average was up to the depression, meaning the year 1930. But I do believe we could have made an increase in our gross business of 20 per cent right straight through the depression. The 20 per cent increase covers from the end of 1918 to 1934.

Q Now, having in mind the same elements of the same question, the hypothetical question, in the absence of the matters and things specified in that question, what, in your opinion, would have been your average net profits over that period?

MR. STERRY: To that we interpose the same objections on the grounds already stated. Does your Honor wish them re-stated?

THE COURT: I think not. It will be deemed that you incorporate those objections. Let the objection be overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 186.

MR. STERRY: And may it be now deemed that further examination on this line may not be interrupted and all questions on this may be deemed subject to the same objection, ruling and exception?

THE COURT: Yes.

A Operating under the terms outlined in your question, we would have been able to have made a net profit of 25 per cent.

No.

8069

2

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

FOSTER AND KLEISER COMPANY, a corporation,
Appellant,

vs.

SPECIAL SITE SIGN COMPANY, a corporation,
Appellee.

Transcript of Record.

VOLUME 4

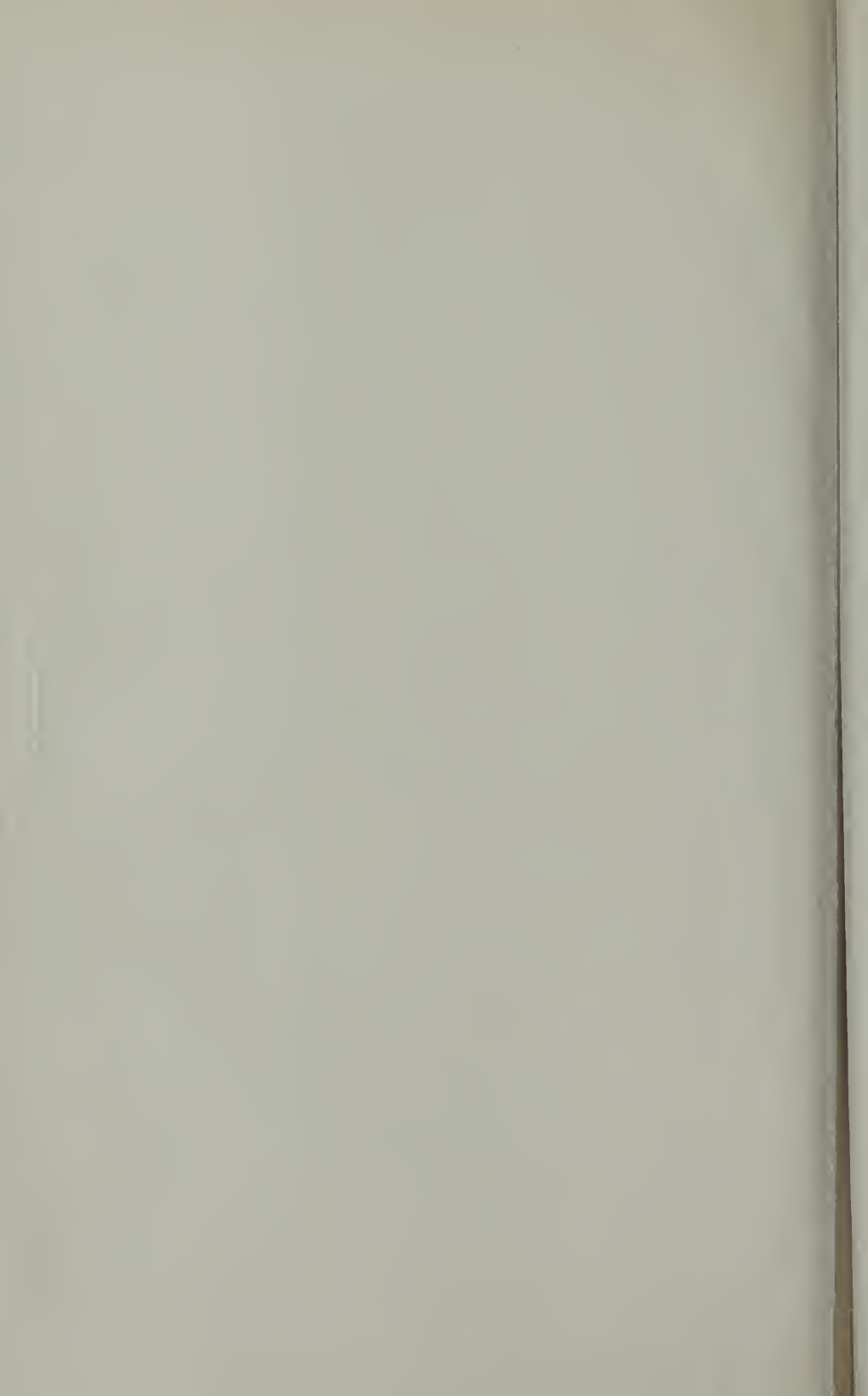
Pages 1841 to 2496, Inclusive.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

DEC 18 1935

PAUL F. O'BRIEN,
CLERK



No.

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

FOSTER AND KLEISER COMPANY, a corporation,
Appellant,

vs.

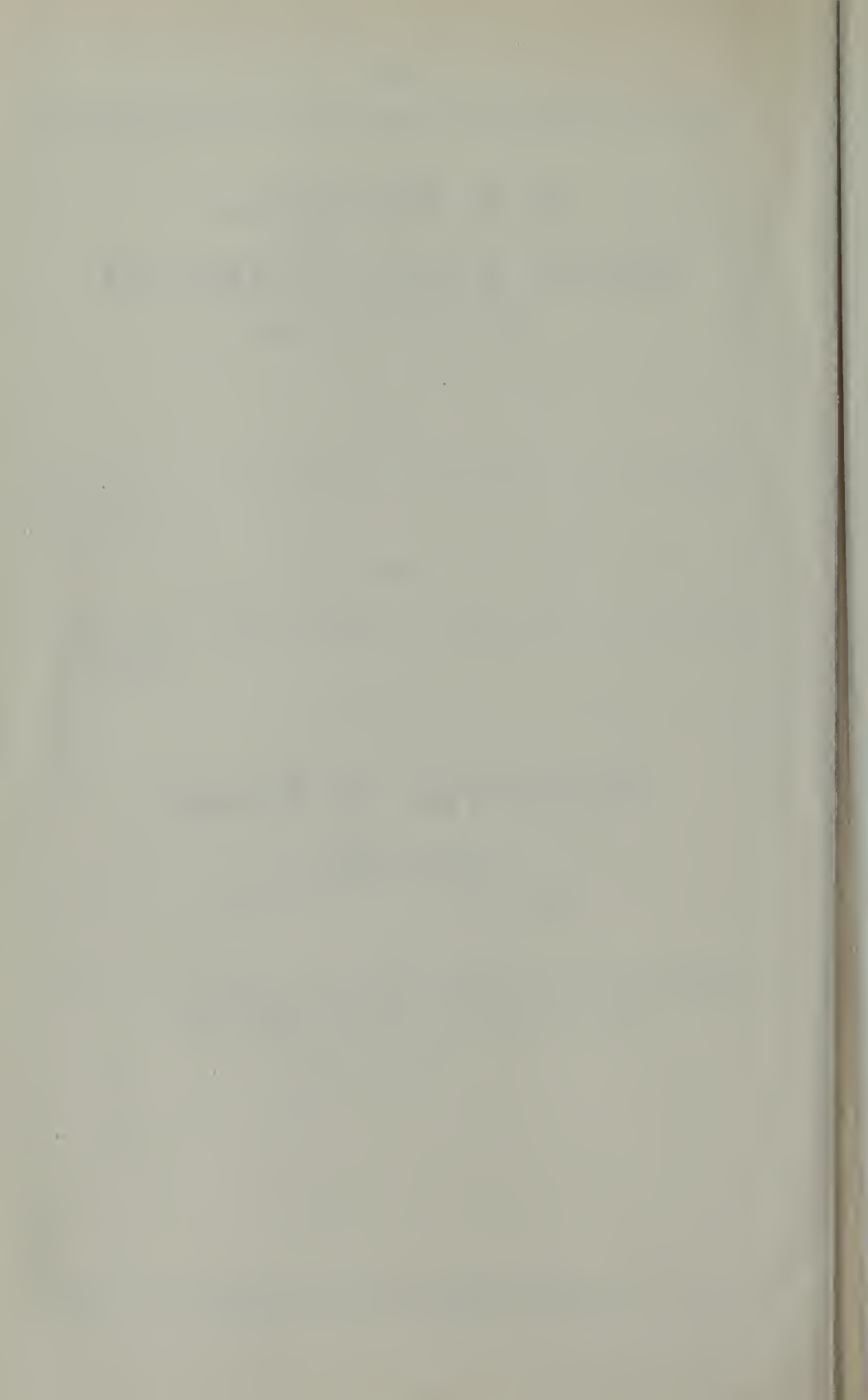
SPECIAL SITE SIGN COMPANY, a corporation,
Appellee.

Transcript of Record.

VOLUME 4

Pages 1841 to 2496, Inclusive.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.



(Testimony of Charles H. King)

Witness continuing: Among the 30 office record cards I said I had examined, there is only one that I still have, that is the Hirsch location on Alvarado Highway south of Main Street, Irving. All the others I no longer have.

CROSS EXAMINATION

BY MR. CLARK:

I can't recall the size of our plant at the time we started in business in December, 1916. I would have to look at the records for that. My statement that we had constructed a total of approximately 2,000 panels in the period of time we have been in business is my opinion only, it is not a statement of fact.

MR. CLARK: I move, if the court please, to strike out all the witness's direct testimony relating to the number of structures that he erected during the period he was in business, on the ground he now states it is merely an opinion.

THE COURT: While he says it is an opinion, he really means an estimate, doesn't he? In other words, you had charge of this business?

A Yes, sir.

THE COURT: And you did the work, through your employees, and that is your best estimate of the number of signs that you constructed?

A Yes, sir.

(Testimony of Charles H. King)

THE COURT: It is not the expression of an opinion as to whether or not he erected the signs, but an estimate of the number he erected. Motion to strike denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 187.

Witness continuing: The depression hit us in 1930. I could not say how many panels we had in our plant at the end of 1929. I can't recall that. I should think we had about 70 poster panels and about 150 painted bulletins. We went into the poster panel end of the business in 1927. Prior to that we had limited our business exclusively to paint which consisted of erecting and painting bulletins on highways. We were inside the city limits of the City of Oakland probably within half a mile of the heart of the city, at 14th and Washington. We went into the poster panel business because there was a system developed whereby we could produce posters in our plant and we did not depend upon the Donaldson Company or other lithograph companies for posters. It was always our ambition to get into the poster business. Prior to that time we have made a thorough investigation of the circumstances; Cordtz, La Fon and myself had talked it over in our conventions of independent plants. We made no attempts to get advertising posters anywhere or from anybody because we realized it was futile.

MR. CLARK: I move to strike the last part of the answer as being a conclusion of the witness, "because we realized it was futile."

THE COURT: Denied.

(Testimony of Charles H. King)

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 188.

THE COURT: How did you know it was futile?

A We knew that Foster & Kleiser Company, through their combination, controlled the posters at the source, and we knew that we were not able to get Donaldson posters, and we were not able to get into the poster business until we were able to produce our own posters.

MR. STERRY: I want to move to strike the answer on the ground it is a pure conclusion of the witness.

THE COURT: Well, I am not going to handle the case for the plaintiff at all. The question was: What did you do? That is where we start from, what did you do to get this poster business?

MR. CLARK: Here is a man who says—

THE COURT: (Interrupting): Well, I know, but he should be—he should tell us what he did. He says in effect he did not make any effort because he knew there was no use. Now, you should say how you know. It will not do for you to say it was no use. What did you do?

A I called on advertisers in an effort to get their posting business.

THE COURT: Well, for instance, what?

A Well, for instance the Johnson Clothing Company in Oakland. He thought he could get—

MR. CLARK: (Interrupting) I object to what the Johnson Clothing Company thought.

A Well, we were unable to get posters.

(Testimony of Charles H. King)

Portion of testimony on this page stricken out on page 3605 of transcript.

MR. CLARK: This is a serious matter, if the Court please.

THE COURT: What was the net result of your effort?

MR. CLARK: If your Honor please, may I interpose a question before that one is answered?

THE COURT: Yes.

MR. CLARK: My question was, not what he did with the Johnson people, and I will clarify it in this way: Did the Johnson Clothing Company manufacture or sell outdoor advertising posters?

A No, sir.

MR. CLARK: I submit that the answer should be narrowly limited first, and then let him explain.

THE COURT: This now is an effort on his part to obtain some poster business. He was describing the result of an effort to obtain some poster business.

MR. CLARK: All right. Go ahead.

A I called on Johnson to get his poster business and he *though* he would be able to get the posters for us. And he wrote and found that he would not be able to get the posters, and so we did not get the business.

MR. CLARK: I object to all of that and move to strike it all out on the ground it is not responsive to any question at all. On the further ground it is the opinion and conclusion of the witness, and on the third ground it is not the best evidence.

(Testimony of Charles H. King)

THE COURT: Confine it to the scope that he called on Johnson to get posters and Johnson tried to get some, and what did you say, he could not get them?

A He was not able to get them.

MR. CLARK: There we are again.

MR. STERRY: And that, your Honor, "that he tried to get them" is hearsay.

THE COURT: A ruling is made; go on.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 189.

MR. STERRY: May I specifically call your Honor's attention—

THE COURT: No, not now, Mr. Sterry. I sifted out the portion of the answer that I thought was not a conclusion.

MR. STERRY: There was a motion that your Honor has not ruled on.

THE COURT: I think the witness must be allowed to tell just what he did to obtain this business, and that being, I assume, the basis of his statement that he could not get the business. Go ahead and tell us just what you did.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 190.

A Mr. Johnson wanted to give us the business.

(Testimony of Charles H. King)

THE COURT: You have already told us that. I may be mistaken, not having very much knowledge of this business, but I supposed Johnson was one of the persons from whom he would get outdoor advertising business.

MR. CLARK: That is quite true.

THE COURT: And in that respect that would be knowledge testimony; isn't that right?

MR. CLARK: I will take your Honor's ruling on the matter.

THE COURT: In other words, he says he could not get outdoor advertising poster business. Now, we will say he called it poster business, that is his statement that he could not get that. Very well. That is a conclusion. He must tell us why he could not get it, what he did to get it. He says he went to a man named Johnson. Now, with my limited knowledge of the subject, I would suppose that Johnson is one of the persons who offered some of this posting business, or at least from which it came. Otherwise I don't see why he should go to Johnson, rather than to somebody else.

Witness continuing: Johnson was a clothing merchant in the City of Oakland handling the Kuppenheimer line. He dealt in his own posters. I guess he bought and sold his own posters. He paid the Kuppenheimer a certain part of the cost of the posters, as I understood it. He did not sell those posters. I said that he bought and sold posters a moment ago because he got the posters and placed them with the advertising company to be posted on plants. He placed them with Foster & Kleiser and not with me. That is not the reason I could not get

(Testimony of Charles H. King)

the posters to post on my plant. I made an effort to get posters from the Donaldson Company prior to the time I went into the poster business. I would have to refer to the records to get the exact time. My contract ledger sheets showing the Montgomery Ward business would show that because that was the first posting we did.

Examining this contract register, Plaintiff's Exhibit 121-A for identification, I find that we attempted to get posters from Donaldson in approximately August of 1927. We went into the poster business at approximately this time too. I have been endeavoring to get into the poster business for years and I had made a good many efforts to get posters. We secured this Montgomery Ward contract because we were able to produce our own posters at this time and we did produce them on this contract. That was the first attempt we made to get lithograph posters from Donaldson. We wrote letters to Donaldson. I will produce them as soon as I can get them. We never attempted to get lithograph posters from Foster & Kleiser nor did we inquire of them. I testified the other day that Foster & Kleiser were the agents of Donaldson for posters. That was common knowledge and that is the basis upon which I gave the testimony.

In 1916, to the best of my recollection, our plant covered territory from Bakersfield to Chico and Ukiah. They were all paint boards, mostly on highways.

When I first started in the outdoor advertising business in 1916 the staff of the Special Site Sign Company consisted of just myself and the bookkeeper. I can't recall what our actual paid in capital was. It was probably five or six thousand dollars. Our outstanding stock today is

(Testimony of Charles H. King)

about \$7,200. It has never been any greater than that in the entire history of the company. It is possible that I am wrong about that. That is my opinion. The maximum amount of working capital that we have had in our possession in any one year has been about \$10,000. It is not my opinion that upon the basis of the hypothetical question put to me by Mr. Glensor that the Special Site Sign Company could continue from 1919 indefinitely in the future to make a gross income each year 20 per cent greater than the year before. I suppose there would be a saturation point somewhere. I don't know where that would come. I didn't figure that far into the future. I merely figured up to the end of 1934. In my opinion as an expert in the outdoor advertising business, I see no reason why we should not continue to make the 25 per cent profit each year. I am not familiar with any other businesses but I know the sign business and I know that we could make 25 per cent. No business in which I have ever been interested has ever made a 25 per cent profit in a year. I have not been interested in any other business. I have not been close enough to other businesses to answer your question as to whether I know of any business, commercial or otherwise, which has made a 25 per cent profit a year since 1919. My reasons for saying that the Special Site Sign Company could do that are that I know what our costs in the business are and I know that if we had been allowed to complete our showings or half showings or quarter showings, or any kind of showings, we would have been able to get our schedule. On our schedule of prices, with our costs, we could have made 25 per cent in most instances and, in

(Testimony of Charles H. King)

others, more than 25 per cent. We have a schedule of costs and prices and have had a schedule each year since 1925. Our schedule for standard poster panels has been \$32.50 for illuminated and \$7.80 for dark panels. Very often we vary from that price, because we were selling odds and ends and we weren't able to get our schedule price. A full showing in our plant had always consisted of about 76 boards. My testimony is that we have never been in a position to sell a full quarter showing or a full half showing or a full three-quarters showing or a full showing of poster panels. That condition of inability has persisted throughout my entire time in the past with this advertising business and persists today. My contention is that because of the unfair practices of Foster & Kleiser Company we were prevented from getting together a full showing of anything in poster panels. Whatever we offered to an advertiser, it was not a quarter showing, a full showing or a half showing. It was a broken lot. I don't know as we told the advertiser about it or not.

Q. If it was a broken lot, of course you did not offer it to him as full showing or a full quarter?

A. The advertisers know what they are buying.

Witness continuing: Painted bulletins are not sold in full showings or half showings or quarter showings. Bulletins are sold in groups, but the make-up of a group of painted bulletins depends largely on the advertiser because every advertiser has a different idea. Painted bulletins are very rarely sold as individual units. They are selected by the advertiser or his representative in groups which are called "packages". We sell a poster panel

(Testimony of Charles H. King)

broken showing permitting the advertiser to select his posters. We have had to do that because we haven't been able to offer complete showings. We have always done that. We haven't been able to do anything else. We do not exactly permit the advertiser to go into our plant and select the poster panels upon which he wants his paper posted. In some instances, if he wanted to change the location of a poster and wanted to cover some other section, we allowed him to change the proposal originally made. When we first sold an advertiser we sold him a showing that we had been able to get together. As I recall, there were some changes made from time to time at the wish of the advertiser himself.

Q. How many quarter showings could you accommodate on your plant at one time—at the time of the greatest number of panels?

A. Well, we were never able, as I said, to deliver what you would call a quarter showing.

Witness continuing: My bookkeeper and myself made up the staff of the Special Site Sign Company for about a year. We then added a salesman. The bookkeeper did not do any selling. The salesman I employed about a year after I organized the corporation sold space to local, Pacific Coast and to national advertisers, or attempted to do so.

I couldn't say how long the three of us constituted the staff of the Special Site Sign Company. The maximum number of employees that we have had, including officials, was approximately 8 in the sales and leasing. Two of them were leasemen. At times we had more than two leasemen in our organization. At times we had a max-

(Testimony of Charles H. King)

imum of four leasemen. I don't recall what year that was. The maximum number of salesmen that we had at one time was three, as I recall. In an effort to sell our poster advertising space to national advertisers, we worked with all the agencies, the Bureau, we called on the advertisers direct where possible and corresponded with them in the East. I believe we began working with the Bureau in 1929. We limited our effort with the Bureau to the Bureau office in San Francisco. We solicited all the agencies in San Francisco, McCann-Erickson, Lord & Thomas, Bottsford Constantine, Irwin Waisy, and there are a number that I can't recall now. We had an eastern representative. I can't recall the date but I believe I could find the date by searching my records. We had a representative by the name of Mahin in New York and one by the name of Bender in Chicago. We did not have a representative on the Pacific Coast. We represented ourselves. Mr. Westbrook represented us and the other independents on the Pacific Coast. On one occasion I went East to interview advertisers and representatives of agencies. I don't recall the date but I went to Cleveland to call on the Champion Spark Plug account, Mr. DeWitte, vice-president.

Most of the national outdoor advertising business originates in the East. That business is handled through the agencies and from the agencies to the Bureau and from the Bureau to Foster & Kleiser. Your statement that the sales effort made by the plant owner must be made upon the agency or on the advertiser, or upon both, is substantially correct. We solicited from the merchants who handled the nationally advertised products but he is

(Testimony of Charles H. King)

rarely able to influence the manufacturer or jobber to place advertising matters in the local plant of his selection. The agency gets its information as regards the outdoor plants through the Bureau. Our plant sends its specifications to the Bureau, but as far as I have been able to learn all the information that goes to the agencies is private information and I don't know what report is made on my plant to the agency. I have never seen a publication of the National Outdoor Advertising Bureau in the form of a booklet setting forth a description of the various outdoor advertising plants in the United States. I have never been able to get hold of one of those.

I know what the function of the National Outdoor Advertising Bureau is. It is to check outdoor advertising plants and when agencies want information regarding the plants, it is furnished to them by the Bureau. It is information as regards the type of a plant and how much space they have open if an agency wants to place a contract. The Bureau furnishes information in regard to what showing can be given and what plant in the towns in which the agency is interested. In other words, the Bureau supplies information as to the capacity and the quality of service, etc., of outdoor advertising plants. It is my understanding that the Bureau in a good many instances designates what plant it is to go on. After the contract has been let it is their duty to check and inspect the plant to see whether or not the contract is performed properly. I never had the Bureau check my plant to see that. I never had a contract delivered to me by the Bureau. It is possible that my plant is not and never has been of sufficient posting capacity to attract national outdoor advertising.

(Testimony of Charles H. King)

I called attention to the fact that our plant was more individual than Foster & Kleiser's to the Bureau and still we got no recognition. I drew a comparison between my plant and Foster & Kleiser's plant. I think that is fair. It is probably not fair to call the national advertisers' attention to the fact that our goods are better than Foster & Kleiser's or any other competitors. We are not on main highways or main thoroughfares. We use spotted maps and send them to advertisers. I think it is a fair thing to spot up a map showing what we can offer an advertiser as compared with what a competitor can offer and explain it to the advertiser. There isn't anything wrong about it at all in my opinion.

Q There isn't anything wrong about it, in your opinion, in comparing the service that you can render, with the service that Foster & Kleiser Company can render, is there, if you are fair in your statements with respect to Foster & Kleiser?

A I made no such comparisons as that.

Q There is nothing wrong about it if you did, is there?

A In our proposals, we didn't compare our plant with Foster & Kleiser's plant.

Witness continuing: We have sent spotted maps to the advertisers and agencies and the Bureau. There might be something unfair in the comparison between a showing that we could offer an advertiser and a showing in the City of Oakland that could be offered by any of our competitors. I did not compare what our plant could offer an advertiser with what any other plant could offer. I offered it on its merits. I convinced them that the

(Testimony of Charles H. King)

merits of my plant outweighed the merits of any other plant just as a salesman does, by sales talk. Our salesmen do not compare their goods with the goods of competitors. They never have to my knowledge. It is against the policy of my company to permit them to do that. It never occurred to me that that might be the reason we did not get any national business. My company were members of a national advertising association formed in Cincinnati. I believe they called it the United Outdoor Advertising Association. It was an organization of the so-called independent advertising plants and, as near as I can remember, it was organized in about 1928 and went out of existence about a year after that. The purpose was to coordinate the sales efforts of the independents over the United States. As a secondary thought it considered standards of construction of the plants of its members.

We have maintained a construction crew and a painting crew throughout the existence of the company. At the present time we only have two landscapped painted bulletins in our plant, one at our plant and one at First Avenue and East 12th Street. I don't believe we have ever had more than three at one time, that was about 1931 and 1932. I can't recall when we had the first one, probably in 1927; when we built the one at First Avenue and East 12th Street. We maintain an inspection and service crew of one man, and have ever since about 1920. We have never had more than one man. His function is to inspect the boards and report what condition they are in, see whether the posts are in good order, if the sign is dangerous, and to inspect the lights and posting. He

(Testimony of Charles H. King)

is our construction foreman and makes periodic trips, in Oakland once a week and out on the highways about once every six months. He works from 8 in the morning until 5 in the evening. I made a mistake. One evening each week he checks the lights. Our salesman and myself also check lights. There are three regular inspections a week. I don't know on just what days. Monday the salesman checks them, and about the middle of the week I check them, and at the end of the week the construction foreman checks them. That check is made from dark on for whatever time it takes to make the route. I don't think it ever took until 3 o'clock in the morning. I have made the rounds. It took me two hours to check our illuminated plants. That is the only inspection service that we maintain. That is all that is necessary.

In deriving my formula in accordance with which I gave my estimate of the value of various locations, I took into consideration to what extent the property could be developed and what the monthly income would be and found the value of that particular site to the plant as a whole. I assumed that I was entitled to make and would make under normal conditions 25 per cent net profit on each and every location. I then assumed that each and every location had a certain value to the plant as a whole and to each and every other location, and to the firm as a going company. For that so-called plant value I allocated one-third of the net that I said I could make from that location. I assumed that a lease had an average life expectancy of six years. We multiplied the monthly income by 72 months and took one-fourth of it and then

(Testimony of Charles H. King)

added one-third of that one-fourth. I worked that formula out myself. I arrived at the one-third that I attributed to each location for its assumed value to the plant as a whole in this way: Each one of these bulletins carries our imprint at the top and a prospective advertiser, traveling the highway, sees a nice bulletin on a key location. That is repeated as he goes down the road and then it creates new business for the firm, the same as if an author puts out a book under his name and sells it at a certain price. That sales price is not the only value to the author. The book creates a demand for more of his work. And likewise an artist who paints a fine picture with his name on it. That creates a desire for more of his pictures and creates new business for the artist. That applies likewise to our key locations. Advertisers see those things and ring in and want to purchase a sign like this one or that one, and I have estimated that at least one-third of the new business that we obtain comes to us that way.

I did not make any distinction in the application of that formula between my unbuilt locations and my built ones, nor between key locations or any other locations. The locations in question were all key locations, each and every one of them. A key location is a location on a main thoroughfare with good visibility and where the purchasing power is high.

Referring to my file, I valued the Hamlin location at \$23,400. That was for six years in the future. I calculated a monthly income, gross, of \$975. I multiplied that by 72, took one-fourth of it and then added to that one-third of one-fourth. I could not say what the actual

(Testimony of Charles H. King)

income was that I was receiving from that property at the time I claimed I lost it to Foster & Kleiser. I believe the books would show that. I did not look up the actual income in the books. I didn't have it in mind at all when I gave my testimony that the value of this location was \$23,400.

The Hamlin Ranch was just opposite Holy Cross Station.

Mr. Clark thereupon reviewed with the witness various contracts for the Hamlin Ranch, as shown by the contract Register of Special Site Sign Company.

Witness continuing: The total amount that I actually received under those contracts was \$1,290.25 over the period of time from January 15, 1919 to January 15, 1921, which averages \$53.78 a month actual revenue that I received. It is still my view that the property was at that time, 1921, of a value of \$23,400., because it had at that time a potential gross revenue, meaning capacity, of \$23,400.

I testified that the loss of the Hamlin location almost put the Special Site Sign Company out of business. We had lots of telephone calls when we had our imprints on those boards at Holy Cross. It sold considerable other business. It was not especially profitable at that time, but it must be considered that these boards were old, dilapidated boards, and the site had not been developed.

To get the monthly gross income or value of \$23,400., you would multiply by 3 and divide by 72. The monthly income would be \$975. That \$975. at 72 times would give you \$70,200. I multiplied the \$975 by 18 as a sort of a short-cut. Three times \$23,400. would give the gross

(Testimony of Charles H. King)

income of that property. We took 25 per cent as our profit and then took one-third of that 25 per cent for the value of the plant. One-third of 25 per cent is $8\frac{1}{3}$, and added to 25 gives you $33\frac{1}{3}$ per cent, so in each instance, if you take the gross income and divide it by three, you get the value to the plant. You get \$5,850.

I have made a 25 per cent net profit on a bulletin at 12th Street and Fallon in Oakland. We got \$275 a month for that board from the Jackson Furniture Company in Oakland. I don't recall just how long we received that, the contract register will show it.

About the time my lease on the Hamlin property was expiring, I made an offer for it to Dr. Hamlin. It was somewhere around \$4,000; I don't recall the exact amount that was for the whole ranch. I don't recall that it was \$4,200 a year. I recall the general appearance of the Hamlin property in January, 1921. There were five, possibly six, advertising boards on there of various kinds. They were all ours. There was no other advertising there that did not belong to us. We were the only ones that had outdoor advertising on the Hamlin Ranch at that time, as far as I know.

I was down through there frequently when we had our boards up, every month or two months. I wouldn't say exactly that the Hamilton Ranch was a mass of outdoor advertising signs in the month of January, 1921, but the signs were a mess, and that is why we didn't get more money for them. It was our idea to develop and clean the site up. That is on the main highway between San Francisco and Los Angeles, near Burlingame, San Mateo

(Testimony of Charles H. King)

and San Francisco. I really couldn't answer your question as to whether the women's organizations and civic organizations were up in arms about the unsightly appearance of the boards on the Hamlin property at that time. There has always been agitation by women's clubs, not to any particular sites but all sites. We had plans to develop and clean up the site. We were kept so busy with Foster & Kleiser's interference that we hadn't got to it. We had not had our locations on there very long. I believe it was a year and some months.

In the billboard business, "sniping" means signs that are put up without permission of the owner.

Friday, January 4, 1935

Witness continuing: In the application of my formula on what I call value, I do not necessarily assume that we would have a billboard on the location. I do not assume necessarily that if we had a structure on it, that the structure would be sold to an advertiser throughout the entire six year period of the lease. The 72 months in my formula is a term of expectancy. We have estimated that without interference that would be our term of a leasehold and we would derive that revenue from that leasehold for the term of it. I am assuming that for a six year period we would derive revenue. I don't think my answer a moment ago was inaccurate. I assume that during that six year period the boards would be filled for the entire period without any cessation of advertising matter on them. I don't assume necessarily that we would have a structure on the property. I do not assume that we would sell the vacant lot to an ad-

(Testimony of Charles H. King)

vertiser. That whole theory is an average. We were working on the law of averages. We don't assume in our formula, first, that we would have a billboard on the lease, and secondly, that the billboard would be sold to an advertiser throughout the entire period of six years.

MR. CLARK: Then, if he does not assume it, I move to strike out all testimony given by this witness on direct examination with respect to the 72 months, because he says now that he makes no assumption, and consequently it appears plainly that the factor of 72 months has no relation to the matter.

THE COURT: I am not entirely clear on what the position of the witness is.

BY THE COURT:

I gave a figure that I say is the total revenue that I would derive from this site for a period of 72 months. You can't get revenue unless you have got a sign there, but this is an average period. We figure how the site could be developed. The figure I gave is on the assumption that it is a developed site, and a developed site means one filled to capacity with signs. You can't have signs unless you have structures. I don't assume that we have structures.

THE COURT: Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 191.

(Testimony of Charles H. King)

BY MR. CLARK:

I assume that the assumed structures would be sold for a period of 72 months in the application of my formula.

The contract register of the Special Site Sign Company shows a contract with Jackson Furniture Company dated January 8, 1932 to run 24 months from March, 1932, to March, 1934. The contract was cancelled, however, on the 13th month at a penalty.

This data concerning a contract in my contract register showing a contract dated October 22, 1925, to run 36 months from December 18, 1925, invoice to read "Option to cancel end of 12 months, \$20 per month additional; end of 24 months, \$15.00 per month additional; terms \$275.00 per month.", is the painted bulletin about which I spoke yesterday in answer to a question of yours when I stated that I made a 25 per cent net profit on the bulletin at 12th Street and Fallon in Oakland. That contract was cancelled in the 13th month and it appears that we reduced the price on April 14, 1926 to \$250, commencing December 18, 1926.

Q Did you make a profit of 25 per cent on \$275 a month for a period of six years?

A No, but we made a profit of 25 per cent or better on the contract.

MR. CLARK: I move to strike the last part of the answer as not being responsive to the question, "made a profit on the contract."

THE COURT: Motion denied.

(Testimony of Charles H. King)

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 192.

Witness continuing: After examining my file relating to the Swain location, I find that we lost the board on September 4, 1926. I made a memorandum of that location. (Witness produced memorandum.) As near as I recall this date of May 1, 1930, shown in the memorandum, is the date we sent our men up to the Swain location. That was the date the sign was lost. This memorandum which reads "Lessor John A. Swain, lease No. 2." is the one we are talking about.

"Location lower Sacramento Road two miles north of Stockton; terms of lease May 13, 1919 to May 13, 1925, six years; renewed May 13, 1925 for five years to May 13, 1930; amount of rental \$15.00 per year; advertiser Brunswick Tire, later Star Brand Olive Oil, 10 by 50 feet; date lost May 1, 1930." The date lost "May 1, 1930", refers to the date on which I say we lost the location. We sent the men up there, probably after we had lost the location, and found the sign gone, and the men reported that. I believe this date here was the date they reported it on, May 1, 1930. I made that memorandum about six months ago. Mrs. Montgomery and I worked on the compilation of it from what records we could find.

(Testimony of Charles H. King)

This memorandum shows that the sign was taken down in 1930.

The notation on the bottom of Plaintiff's Exhibit 161-C is in my handwriting. It says, "Lost at expiration, May 1, 1930." I guess we lost the lease on May 1, 1930; that is what this notation says. My previous testimony that we lost the lease and the sign both at that time is correct. I also testified that our sign was taken down shortly before expiration. I have no recollection at all that our sign was taken down shortly before May 1, 1930; the only recollection I have is this notation here. I got the information that I put in that notation from an oral report of the men that was given when they arrived in the shop on May 2nd or 3rd, 1930. I made this memorandum within the last six months.

My books show that we painted the sign on that location, the Swain property, on May 1, 1930, but there must have been a mistake in writing it down or something, because I recall it very distinctly. It may have been 1931 that we lost it instead of 1930. I don't know. I can't say when we lost the lease. I am confused on it. I have nothing further to say. I don't know when we left the location.

According to the contract register, we received \$14 a month for that bulletin on the Swain property. The value of that location at \$14 a month gross revenue, in accordance with my formula, would be \$336. I testified

(Testimony of Charles H. King)

that it was of a value of \$553. That is at the rate of \$23 a month. I don't believe we ever got \$23 a month for that bulletin on which the Olive Oil sign was painted from any advertiser.

MR. CLARK: I move to strike out all the witness' testimony given on direct examination concerning the value of this location for the reason that it appears, first, that the witness does not know when he lost the location, consequently the presumption arises that Foster & Kleiser did not take the location until after he had lost it; secondly, that the evidence is that Foster & Kleiser did not disturb plaintiff's possession in any way at all, but that Mrs. Swain refused to renew the lease.

THE COURT: I will deny the motion at this time.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 193.

Witness continuing: This Banchemo location is the location with respect to which I testified that we never gave Hughes a quitclaim. That is my signature on this document dated July 19, 1930. I must have had a mental lapse. I certainly don't recall when I gave him this quitclaim.

The document referred to by the witness was thereupon received in evidence and marked Defendants' Exhibit YY in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[DEFENDANTS' EXHIBIT No. YY.]

File with Lease No. 3082

July 19, 1930

Confirming our conversation, we have no further interest in the property which we formerly had under lease on Telegraph Avenue, WS, in the vicinity of 59th Street, owned by Mr. Banchemo, and as far as we are concerned you may enter into an agreement with him if you desire.

Signed: SPECIAL SITE SIGN COMPANY

By: Charles H King Jr.
Mgr.

No. 5673-C. Special Site vs. Foster & Kleiser Deft Exhibit No. YY for ident (later in evid) Filed 1/4 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

THE WITNESS: I believe that that was after our sign was taken off, and after Foster & Kleiser had the lease.

MR. CLARK: I move to strike out the testimony of the statements of the witness on the ground they are not responsive.

THE COURT: Denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates Exception No. 194.

(Testimony of Charles H. King)

MR. CLARK: I now move to strike out all the witness' testimony with respect to the value of this Banchemo site, on the ground that it now appears that he stated in writing a quitclaim of his right, title and interest to the Banchemo location and said he had no further interest in it.

Witness continuing: We did not remove our sign at all, as I recall it.

MR. GLENSOR: The quitclaim is dated July 19, 1930, and Foster & Kleiser's record cards show that the sign was removed in 1930, but that he was ordered off way back in 1927.

THE COURT. I do not think the quitclaim is decisive of the question. Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 195.

Witness continuing: We secured the Segin property for a 24-sheet illuminated poster panel and had a 4 by 6 on it. We erected that on October 23, 1925, and as near as I can recollect, we lost it about three years after that. Our rental checks show payment of rent from 1925 to 1929, and as I recall, the Emanuel Furniture Company was the only advertising matter we had on that location. According to the contract register, the contract with the Emanuel Furniture Company calls for seventy 4 by 6 signs at \$2 per unit per month. One of these signs was located on the Segin property. It is my testimony that Segin told me prior to November 10, 1928 that we

(Testimony of Charles H. King)

would have to get the sign down because if he had it down he would be getting \$35 a year from the Foster & Kleiser Company. I believe that Foster & Kleiser's office record cards show that Foster & Kleiser Company paid him \$6 a year. Nevertheless, that is what Segin said. I would like to explain that the tree was cut down about the same time that Segin called at our office in 1928.

As an expert in the outdoor advertising business, it is my opinion that the Segin property at the time we got it in 1925 was available for a 24-sheet illuminated poster panel.

This lease on the Twining location, Plaintiff's Exhibit 133-A, provided that the lessor might order the boards removed at any time by giving the lessee thirty days' notice in writing in case the lessor sold the premises. We had another lease on that property subsequently that did not contain that clause.

In my experience in the outdoor advertising business I have found it desirable for an outdoor advertising concern to offer a service stated-wide in scope *on* Pacific Coast-wide in scope. Stevens of Seattle, La Fon and Cordtz and myself at one time planned to associate ourselves together so that we could deliver a coast-wide service between us. We did not attempt to form a single company. We discussed the question whether it would be desirable to deliver that service under one name and finally decided not to do that.

We owned bulletins above Ukiah up as far as Seattle, north of Seattle and over to Spokane and down as far as Mexico. Over this territory we had Folger Coffee, Ghirardelli's Chocolate and Champion Spark Plug signs.

(Testimony of Charles H. King)

We owned bulletins in all those places. We just abandoned them after the expiration of our Champion Spark Plug contract in 1926. We acquired those bulletins and locations for the purpose of performing the Champion Spark Plug contract. We had several hundred of those bulletins all told. The bulletins were cut to represent a spark plug and were sent out here by the Champion Spark Plug Company. We didn't change the original painting but we kept them repainted. Since 1926 our business has been limited to the State of California.

It seems to me I had a discussion with Mr. George A. Hughes about selling my poster plant. Mr. Ashcraft, who was an association plant owner in Richmond, wanted me to give him a price to offer to Foster & Kleiser. I gave him a price of \$100,000 and George Hughes told me that that was too much money for the business and asked me how I figured it was worth that much money. I told him that that was what I wanted for it, and that if they didn't want it, they didn't have to take it. That is all the conversation, as far as I recall. I don't remember when that occurred. I recall Mr. Hughes asking me concerning the report which was current that Mr. Stevens of the C. E. Stevens Company of Seattle had purchased a 51 per cent interest in our plant. Mr. Hughes asked me if he had bought into my plant. I stated that we had no connection with Stevens in any way and that Stevens had submitted various propositions to me, none of which were acceptable. That conversation possibly took place about March 5, 1931 in the office of Foster & Kleiser Company in Oakland. I never offered our posting plant to Mr. George Hughes, the Oakland Branch

(Testimony of Charles H. King)

Manager of Foster & Kleiser Company, nor did I ever take a list of our locations of poster panels in the cities of Oakland, Berkeley, San Leandro and El Cerrito and submit them to him. I believe I took a list over to Mr. Lausen at one time about 1931. I took that list over to interest Lausen in the purchase of our plant. I wanted to sell the whole plant at that time.

In my experience in the outdoor advertising business I have never maintained a public relations department. I have kept or attempted to keep track of ordinances or regulations of any kind that might be passed by the legislative bodies of the City of Oakland or the County of Alameda which might affect the business of outdoor advertising or of legislation that might be introduced in the State Legislature, but I have never maintained a separate department for that purpose.

It has been my experience that it was desirable for one engaged in the outdoor advertising business to keep the structures in good presentable condition at all times. If that is not done, in addition to the possible loss of customers, it creates unfavorable comment and is liable to cause agitation against the industry. The industry as a whole in California at all times since I have been in the business has had to do everything it possibly could do to keep itself in the good graces of the public to prevent adverse local and state legislation. I don't recall that one of the reasons for the adverse public opinion in 1927 and 1928 was the use by outdoor advertising companies of scenic spots on the public highways of this State. My impression is that the cause of that agitation has been mostly sniping. I define sniping to mean signs and pla-

(Testimony of Charles H. King)

cards and posters that are pasted and put on property without any agreement from the owner. I would also consider the pasting or tacking of a conglomerate mass of small signs on structures or groups of structures as sniping even if the one who did the tacking had the right to do it. As I know the meaning of the term, sniping consists in posters placed all over the sides of buildings and along fences, with or without the consent of the owner, if it is unsightly. We were a small unit in this industry and were pretty well occupied by Foster & Kleiser competition, and we did not feel we could afford to benefit the industry by spending money to lease property on which sniping existed for the sole purpose of eradicating the sniping. We never did that but we took care of our plant and we never did any sniping of our own. We let Foster & Kleiser carry that burden at their own expense. They represent 95 per cent of the industry and they should carry it.

Q BY MR. CLARK: Did you ever, the Special Site Sign Company ever go out and lease a piece of property upon which sniping existed, clean it up at your own expense, and paint a sign "Post no Bills" on that property, and not make any use of it for outdoor advertising?

A Yes, sir, we have.

Q At your own expense?

A Yes, sir.

Q And continued to pay rental on the property to protect it from being used for sniping?

A Well, it was parts of property that we had under lease.

(Testimony of Charles H. King)

Q. Did you use it for outdoor advertising purposes yourself?

A Yes.

Q That was not my question. At least, I did not intend to ask it that way. Did you ever clean up sniping property at your own expense and mark it "Post no Bills", and continue to hold it as secured unbuilt, paying rental on it?

A No, sir.

MR. GLENSOR: I object to the line of questioning as incompetent, irrelevant and immaterial. It is palpably an effort to lay a foundation for showing that Foster & Kleiser were great benefactors of this industry, which is entirely irrelevant and immaterial to the issues in this case.

THE COURT: The objection is sustained.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 196.

Witness continuing: Special Site Sign Company never carried any unbuilt space and never bought space to hold. It might be that at times we leased a space and out of necessity had to hold it for a little while. When we lost a location, we put several leaseholders out and endeavored to secure a space. If we could not secure it, we would eliminate that one from the contract. It was our practice to go out and get new space every time we lost a location. We were successful in almost every case. We did not attempt, as a practice, to carry any per cent of unbuilt

(Testimony of Charles H. King)

space. We couldn't afford to do that. I have no theory as to what the relation or ratio of unbuilt space to built space should be in an outdoor advertising business properly conducted in the territory in which we operate. I have never found it necessary to carry any unbuilt space. I have always gotten along without it. We have had to eliminate a location from our posting or painting contract because of the loss of that location, but that happened very rarely. I couldn't recall right now any that we have eliminated.

On this lease of Gonsalves location, Plaintiff's Exhibit 158-A, the date of the lease is smeared. According to the memorandum in my file, the term of the lease was for ten years from February 15, 1928 to February 15, 1938. I secured that location for a 24-sheet illuminated poster panel. We leased from Gonsalves; the frontage was about 30 feet or 25 feet. As I recall, the frontage of the property adjoining on the south upon which Foster & Kleiser's 6-sheet was situated was about 50 feet. The 25-foot lot is more desirable than a 50-foot lot for an advertising structure because it gives a more open showing to the poster if the 50-foot lot is unoccupied by a structure. I have never found it to be one of the risks of the business that when we leased a lot in the location of that 25-foot lot and built on it that we would find that some competitor has before that leased the lot next to it. I have never found that except with Foster & Kleiser. Any other competitor usually builds when he leases the property. When we leased the 25-foot strip we made an effort to lease that 50-foot property from someone that lived in a house on the rear. They told me they didn't

(Testimony of Charles H. King)

want to lease it. I don't know the name of the person who lived on the property. We made no attempt to ascertain whether the person who lived in the house on the 50-foot lot was the owner or not, but they said they didn't want any signs there. The name of the party on the 50-foot lot was Mrs. Ambrose. After we secured our lease on the 25-foot lot I went to her on two different occasions and tried to get her to cancel the Foster & Kleiser lease.

Q To get the lease, knowing that Foster & Kleiser Company had a 6-foot panel up there at the time?

A Knowing that they put it up to block our site, yes, sir.

MR. CLARK: May I have that answer go out and have a direct answer to my question, your honor? It is not responsive.

THE COURT: Well, it is responsive enough, I think, but it does not answer the question completely. It does not really answer the question that was asked.

Q You knew at the time that you made the offer that the sign was there, of course?

A Yes, sir.

Q That is why you made it?

A Yes, sir, that is why I made it.

THE COURT: Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 197.

(Testimony of Charles H. King)

Witness continuing: It is my view that Foster & Kleiser Company had no right to make use of that 50 foot lot after we had erected our painted bulletins on the 25 foot lot. Foster & Kleiser should have abandoned that location or should have shown possession in some way. I knew Foster & Kleiser were in the outdoor advertising business. If Foster & Kleiser had built a 10 by 50 painted bulletin there on the 50 foot lot after we had erected our 4 by 6s, I would have felt just the same way about it. It is my view that inasmuch as we were first to erect a 4 by 6 structure on the 25 foot lot that we had a right to a free view over the adjoining 50 foot lot.

Q Did you ever offer Foster & Kleiser Company the rent on that 50-foot lot, to give you a free view?

A I knew that that would be futile. I never offered it because I —

MR. CLARK: I move that so much of the answer as states "I knew that that would be futile," go out as not responsive.

THE COURT: No, motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 198.

THE COURT: The witness said he desired to make some explanation of his answer.

Witness continuing: I wanted to explain why I knew it would be futile. I had done such things before and I could never get any cooperation from Foster & Kleiser. We built a board on East 14th Street and 89th Avenue. Mr. Hughes complained continuously to the Building De-

(Testimony of Charles H. King)

partment about it not being built according to the ordinance. He often took it up with me and I told him that if he thought it was bad for the industry that I would gladly move the board at my own expense if he would give me a location out there, but he would not do that.

In my experience in the outdoor advertising business I have never heard anything about the construction of outdoor advertising structures on the inside curves of highways resulting in public agitation except from Foster & Kleiser agents. I drive an automobile myself. A 10 by 50 board on the inside curve of a highway obstructs the view going around the curve if it is a very sharp turn. If it is a sharp enough turn and the view is obstructed, the board constitutes a traffic hazard. I never heard that the construction of billboards on the inside curves of highways has resulted in public agitation against the billboard business except through Foster & Kleiser agents. That is the only way I have ever heard it. There is no law against constructing things of that kind. The so-called Gillig board was constructed on the inside curve of a highway. I never heard that the maintenance of that board resulted in agitation by the State Highway Commission that it should be taken down because it was a traffic hazard. It is not a fact as far as we are concerned. We owned the board for a year but I never heard anything of it. I do not know why Foster & Kleiser Company wanted to get rid of that board. We have a board at what is known as Death Curve on Foothill Boulevard. It is on the inside curve. It is a poster panel. There is about 500 feet unobstructed view there right straight down the road.

(Testimony of Charles H. King)

In this file marked Exhibit 133, the letters marked 133-I, 133-H, 133-G, 133-F, 133-E, 133-D and 133-C are the only letters we received from anyone with respect to the Twining-Milliken property. That is, it is everything we could find pertaining to these matters. I don't believe I told my counsel that we got \$75 from the East Bay Title Insurance Company for a quitclaim deed of our right, title and interest in that Milliken property. In fact, I had forgotten it myself. I believe I received the original of this photostat of a letter which you hand me. I had forgotten that we did that. We also received the original of this photostatic copy of a check in favor of Special Site Sign Company for \$75 and the Special Site Sign Company endorsed the original. I had forgotten it. That was after we had been knocked off, of course. I guess we executed a quitclaim deed in consideration of that \$75 check. The reason I don't recall that is that the deal was all handled by Mrs. Montgomery. I recall that now. I would not doubt but what this certified copy of a quitclaim deed is a copy of the deed which we gave in consideration of that \$75 check.

The photostatic copies of the letter and check and the certified copy of the quitclaim deed were thereupon received in evidence and marked Defendants' Exhibit DDD in evidence. Said Defendants' Exhibit DDD in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[DEFENDANTS' EXHIBIT No. DDD.]

SPECIAL SITE SIGN CO., QUITCLAIM DEED
 TO THIS INDENTURE,
 WM. P. MILLIKEN made this 17th day of
 April, in the year of our Lord One thousand nine hundred
 and thirty. Between Special Site Sign Co., the party of
 the first part, and Wm. P. Milliken, the party of the
 second part.

WITNESSETH: That the said party of the first part,
 for and in consideration of the sum of Ten and no/100
 Dollars (\$10.00) in gold coin of the United States of
 America, to it in hand paid by the part__ of the second
 part, the receipt whereof is hereby acknowledged, does by
 these presents remise, release and forever Quitclaim unto
 the said party of the second part and to his heirs and
 assigns forever, ALL that certain lot, piece or parcel of
 land, situate, lying and being in the City of Oakland,
 County of Alameda, State of California, and bounded and
 particularly described as follows, to-wit:—

Beginning at a point on the northeasterly line of East
 12th Street, formerly Washington Street and distant
 thereon southeasterly 100 feet from the intersection there-
 of with the Southeasterly line of 13th Avenue, formerly
 Walker Street, as said street and avenue are shown on
 the map hereinafter referred to; running thence south-
 easterly along said line of East 12th Street 75 feet; thence
 at a right angle northeasterly 200 feet; thence at a right
 angle northwesterly 75 feet; and thence at a right angle
 south westerly 200 feet to the point of beginning.

(Testimony of Charles H. King)

Being a portion of what was formerly the Town of Clinton as the same is delineated and designated upon Higley's Map of said Town, recorded in Liber "B" of Deeds at page 537 in the office of the County Recorder of Alameda County, California.

[Perforated]: C. R. A. C.

Excepting therefrom that portion sold to the City of Oakland by Deed from L. D. Macy, a single man to the City of Oakland, a Municipal Corporation dated May 25, 1912, and recorded January 30, 1913, in Liber 2134 of Deeds at page 219.

This deed is given for the purpose of releasing the lease executed by Mrs. V. Twining to first party herein; recorded February 4, 1927 Rec. X-10091.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, possession, claim and demand whatsoever, as well in law as in equity, of the said part__of the first part, of, in, or to the above described premises, and every part or parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

(Testimony of Charles H. King)

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above written.

Special Site Sign Co. (Seal)

Chas. H. King, Jr., President (seal)

(Corporate Seal) M. S. Montgomery, Secretary (seal)

Signed, Sealed and Delivered)

In the Presence of—)

STATE OF CALIFORNIA,)

COUNTY OF ALAMEDA) SS. On this 6 day of May in the year one thousand nine hundred and thirty, before me, F. R. Sharp, a Notary Public, in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared Charles H. King, Jr., known to me to be the President and M. S. Montgomery, known to me to be the Secretary of the Corporation that executed the within instrument and the officers who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal)

F. R. Sharp,

Notary Public In and for said County of Alameda, State of California.

1880

(Testimony of Charles H. King)

Recorded at Request of East Bay Title Insurance Co.,
May-8, 1930 at 9. A. M.

AA-29328 1.30

Compared
Bk. W. H.
Doc. W. F. S.

Copied May-15-1930—M. F. McKinnon

C. W. BACON

COUNTY RECORDER

State of California,)
County of Alameda,)^{ss.}

I, G. W. Bacon County Recorder in and for Alameda County, do hereby certify that I have compared the annexed and foregoing document with the original record thereof as the same appears in my office, in Liber 2390 of Official Records page 39 and that the annexed and foregoing document is a full, true and correct transcript therefrom, and of the whole of such original record.

Witness my hand and my official seal hereunto set this
10th day of December A. D. 1934

[Seal]

G. W. Bacon

County Recorder

By C. E. Lagoria

Deputy Recorder.

(Testimony of Charles H. King)

April 17, 1930

Special Site Sign Company
3225 Louise Street
Oakland, California

Gentlemen:

We are herewith enclosing a Quit Claim Deed for your company to execute and acknowledge before a Notary Public.

We are also enclosing our check for \$75.00. This is sent to you according to your telephone communication indicating that you preferred to accept the \$75.00 and remove the sign.

Very Truly yours

EAST BAY TITLE INSURANCE COMPANY

By.....

MRG VB
2 Enc.

General Manager.

1882

(Testimony of Charles H. King)

90-22

12

EAST BAY TITLE INSURANCE CO.
1430 FRANKLIN STREET

No. 15185

Oakland, California Apr 16 1930

Pay to the
order of Special Site Sign Co. \$75.00
East Bay Title \$75.00 and 00 cts Dollars

M R Greer
Gen. Manager
F. B. Sharp
Auditor

To
FIRST NATIONAL BANK
In Oakland
OAKLAND, CALIF.

[Emblem]: Member Federal Reserve System.

[Emblem]: Safe Deposit Boxes for Rent.

This Check Is Issued in Payment of Items as Per State-
ment Following. The Endorsement of Payee on Back
Will Constitute a Receipt in Full.

Our No 17667 for release of lease omitted from our
policy.

Rec. Feb 4 - 1927 Ser X-10091

(Testimony of Charles H. King)

[Stamped on back]: 838 Pay to the Order of Central National Bank 90-4 Oakland, Cal. 90-4 Special Site Sign Co.

[Stamped on back]: Central National Bank 90-4 Oakland Cal Apr 26 1930 90-4 Paid Through Clearing House

No. 5673-C Special Site vs. Foster & Kleiser Deft Exhibit No. DDD Filed 1/4 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: We had a lease from Mrs. Twin-
ing on the property and recorded that ourselves. The
Title Company apparently missed that recordation in ex-
amining the title when the property was sold to Milliken.
We would not get off the property although Milliken asked
us to do it. The Title Company had two or three con-
ferences with me and I would not get off or give them
what I claimed were our rights on the property. The
Title Company had to pay us \$75 to clear the title to the
property and to take our board off. The lease was one
of our short form leases which contained no provision
terminating the lease on a transfer of title . Our board
did not block out the residence behind it even partially.
The rear end of the residence was 75 feet or more behind
the board. Our board did not block that out from the
street any more than anything else would block it. I
knew that Foster & Kleiser Company had obtained a lease
on that property from Dr. Milliken after he had acquired

(Testimony of Charles H. King)

title. I also know that Foster & Kleiser tore up the lease in the presence of Dr. Milliken to relieve him of any embarrassment. I didn't tell my counsel about this quitclaim deed to Dr. Milliken because I had forgotten entirely about it and had forgotten receiving \$75 for it. I never see the checks that come into the office. They are deposited by Mrs. Montgomery. I saw the deed and I recall the transaction now.

MR. CLARK: Now, if your Honor please, with respect to the Milliken property I am going to move, for the record, that all testimony of this witness on direct examination with respect to the value of that property be stricken from the record and taken from the jury.

THE COURT: Is it conclusive against him that he quitclaimed or cancelled his lease, whatever the process was?

MR. CLARK: I think it is, your Honor, and before your Honor rules, may I ask the witness a question?

BY MR. CLARK:

I promised Dr. Milliken in a conversation I had with him shortly before February 25, 1930 that I would either vacate the premises within three days thereafter, or in the meantime arrange with him a form of lease acceptable to him. I cannot remember whether I also told him that I would execute a lease that in terms, price, tenure and so forth, would be acceptable to him. There was never such a lease executed. The reason was that he wanted an exorbitant price for it and said he would give it to Foster & Kleiser. That was in February, 1930 and, as I recall it, Foster & Kleiser's lease was in effect at

(Testimony of Charles H. King)

that time. Milliken told me that. I believe there is another letter there from Milliken stating that he had given it to Foster & Kleiser.

THE COURT: The motion to strike will be denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 199.

Witness continuing: I was in business in Oakland when H. B. Varney was in the advertising business there and when J. Charles Greene was in the outdoor advertising business in San Francisco.

In those days San Francisco was the financial and business center of the Pacific Coast. Most of the large national distributors of goods had representatives in San Francisco. The physical appearance of an outdoor advertising plant around the Bay District was therefore a matter of some importance. The appearance of a plant is always important. It was of importance then because of the fact, among others, that the national distributors had representatives at San Francisco. A good deal of the national outdoor advertising business in those days was secured by contacts made with the San Francisco representatives of the advertising concerns. I don't recall how much of that business we secured in those days.

I remember the physical condition and appearance of the J. Charles Greene plant in San Francisco during 1913 and 1914. It was on a par with all other plants at that time, including mine, in physical appearance and attractiveness. I did not know that the J. Charles Greene

(Testimony of Charles H. King)

plant went into the hands of the San Francisco Board of Trade. I knew that Foster & Kleiser bought them. I had never heard that the Greene plant was practically bankrupt in 1915. I did not try to buy the assets of that plant.

The Varney plant in Oakland in 1915, 1916 and 1917 was very good and was apparently making progress. I always thought they were. I know that Foster & Kleiser purchased the Varney plant in Oakland and Los Angeles in 1919, and I knew about it at the time. It never occurred to me to go in and buy either the assets of the J. Charles Greene plant in 1915 or the Varney plant in 1918. I was not in a position to buy a plant of that size. I was not satisfied with the business that I had at that time but I did not have money enough to buy such a plant.

The principal place of business of the Special Site Sign Company is in Oakland in Alameda County, and has been since the organization of the company in 1916. I have lived in that county during that length of time and live there now.

Q Will you please state why you filed, or the Special Site Sign Company filed this present litigation in Los Angeles?

MR. GLENSOR: Objected to as incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 200.

(Testimony of Charles H. King)

It was thereupon stipulated that if counsel for one defendant asked a question and that question was objected to and the objection was sustained by the court, it might be deemed that the other defendant asked the same question, that the same objection was made and an exception saved to the ruling of the court, and that the original agreement between counsel be extended to that extent.

Witness continuing: With regard to the Kennedy property, Foster & Kleiser built out that board and rendered it partially worthless.

Mr. Clark thereupon read to the witness his testimony on direct examination with reference to the value of the Kennedy site.

Witness continuing: I don't believe I want to change that testimony in any particular. My testimony is that after the block-out by Foster & Kleiser, the Kennedy site was so depreciated in value that we could not get the rent for it from national advertisers that we were receiving from Veedol, whose sign was on the structure on that location. In a general way it was my intention in giving the testimony on direct examination to give the jury the impression that I did not receive as much for the advertising on that property after this alleged block-out as I did before. The location was not as good, it was partially blocked. That being so it was naturally not worth as much money. I may have received more for the advertising but it was just a matter of salesmanship probably, or a lucky circumstance.

THE COURT: Do you mean that the market value was less, is that what you mean, distinguishing between market value and what you actually received?

(Testimony of Charles H. King)

A. Yes, that is what I mean, your Honor. The sign actually was not worth as much money, being partially blocked. I may have gotten more.

I am sure I don't know whether I did or did not get more for that site. That property is on 24th Avenue between East 14th and East 12th Street.

According to the contract register of Special Site Sign Company, we were receiving \$18.50 a month from the O. J. Gude Company for advertising Veedol Oil on the structure on the Kennedy property. The contract register also shows that approximately two years after the partial build-out by Foster & Kleiser Company we received \$20.00 a month for a twelve months contract with an advertiser for the same board on the same location. According to my books we also sold the same board on a twelve months contract to an advertiser for \$19 a month three years after this build-out. I was fortunate in getting more than the market value. The facts are that while we were receiving \$18.50 a month for the boards before alleged block-out, we got \$19 and \$20 a month for it afterwards. I should have been getting \$35 in the first instance. I don't believe that I care to change my testimony that I gave the other day.

I recall the Bruecker location. That is a location that we got after Foster & Kleiser's actions compelled us to paint out a wall that we had a location on. The advertiser on that wall was the Champion Spark Plugs. I said that the cost of painting out that was was \$26. That was more than a painting out. There was a structure on the wall that had to be removed. That \$26 was to restore the wall to the condition in which it was before

(Testimony of Charles H. King)

we got our lease. You understood my testimony on direct examination correctly, when you understood it to mean that the wall location was more valuable than the roof location because the wall location was nearer eye-level than the roof location. I do not desire to change that testimony. I have no recollection of what price we were obtaining for our wall location nor do I recall the price we got for our roof location. It may be true that we were getting \$22.50 a month from the Champion Spark Plug Company for the wall location and that we got \$75 a month from them for the roof location, but that doesn't alter the fact that the wall sign was much the better of the two and more valuable. That wall location was East 12th Street between 13th and 14th. The contract register shows a contract with the Champion Spark Plug Company dated 6/18/20 to run 24 months from 7/1/1920 to 7/1/1922. It appears that we were receiving \$22.50 a month for that wall location from the Champion Spark Plug Company. Now, for that roof location, we received \$75 a month, but I would like to explain that. The roof sign was an illuminated sign and the wall was not illuminated. I said that the roof sign was not as valuable as the wall sign because it was not eye-level. That is true. When I gave my testimony on direct examination I intended that the jury should understand that the roof location was less valuable than the wall location because the roof location was not eye-level. That's exactly what I intended. I don't desire to change that testimony in any way.

I wrote the original of this copy of a letter from Special Site Sign Company to Mr. O. D. Hamlin on December 4, 1920.

1890

(Testimony of Charles H. King)

The letter referred to by the witness was thereupon received in evidence and marked Defendant's Exhibit LLL in evidence and read to the jury. Said exhibit is in words and figures as follows:

[DEFENDANTS' EXHIBIT No. LLL.]

12/4/20

Dr. O. D. Hamlin,
Federal Realty Bldg.,
Oakland, Calif.

Dear Sir:—

It was my wish to lease the Hamlin property for the Special Site Sign Company jointly with Raffetto, Gnecco and Company, for \$4,250. The Special Site Sign Company to have the privilege to sublet for an oil station and a stone yard, which I figured would net us \$1,200.

Our half of the \$4,250.00 would be \$2,125.00, less \$1,200.00 from subletting the concessions, which would leave the advertising privilege standing us only \$925.00. At this figure we could have made a fair profit.

As we have outside stock holders in the Special Site Sign Company, I am governed more or less by the Board of Directors, especially in contracts amounting to over \$10,000.00. I could not convince the directors that obligating the Company jointly with Raffetto, Gnecco & Company, would be good business, though I personally would have done so.

(Testimony of Charles H. King)

Therefore, the only proposition I can make is for us to give up the subletting privilege to Raffetto, Genecco & Company, or yourself, and lease the advertising privilege only. For which I will pay \$1,200.00 per year, as per enclosed lease, which in reality is a better offer, as we are releasing the subletting privilege, worth \$1,200.00 or more.

- 2 -

Our present offer is equivalent to \$2,400.00 in place of \$2,125.00, with Raffetto, Gnecco & Company's \$2,125.00, and the oil station and stone yard \$1,200.00, you will receive \$4,450.00, or a \$200.00 better deal.

Yours very truly,

SPECIAL SITE SIGN COMPANY.

By

President & Gen. Mgr.

CHK:S

No. 5673-C Special Site vs. Foster & Kleiser Deft
Exhibit No. LLL Filed 1/8 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: The facts are that the Hamlin lease was to expire on January 15, 1921. On December 4, 1920, I concluded my negotiations and my attempt to renew for a further period. The rental of \$4,250 referred to in that letter, Defendants' Exhibit LLL, was the rental per year. I understand that Foster & Kleiser Company paid \$5,000 annually for the lease on that property. I was willing to obligate the Special Site Sign Company for \$4,250, but I didn't do it. That is the property which I said Mr. Lausen talked to me about in the Palace Hotel about March, 1920, and it is also the property upon which I said that the signs were a mess. It is not a fact that Lausen said to me on that occasion, in substance or effect, that the Hamlin property had to be cleaned up if Foster & Kleiser Company had to do it themselves. He said they had to have it if it cost them \$10,000. Mr. Lausen made no suggestion to me concerning the unsightly condition of the Hamlin property during that conversation. We did not have lunch together. I testified on direct examination that the loss of the Hamlin location affected our business and our relations with our advertisers very decidedly, that the Lenz Motor Company, Champion Spark Plug and Standard Fence cancelled their contracts at expiration and we lost their business of advertising because we could not deliver equally as good showings as the contract called for. I don't recall that subsequently to January 15, 1921, we received from the Champion Spark Plug Company a contract at \$115 a month for three signs, including the Carter sign and the Arata sign on July 1, 1922, which continued with certain rate adjustments to July 1, 1927. I would have to look that up. I think that after July, 1922 we

(Testimony of Charles H. King)

received another contract from the Champion Spark Plug Company at \$75 a month for one Bay board from November 1, 1922 which continued to December 1, 1925. We had a board on the Bay farm. I don't recall the dates. I think we got it from them after January 15, 1921. If the books show that after January 15, 1921 we received a contract from the Standard Fence Company for one year from October 1, 1922 to October 1, 1923 at \$45 a month, another from the same party for three years from April 16, 1923 to April 16, 1926 at \$15 a month, and still another for three years from March 1, 1924 to March 1, 1927 at \$78.75, then it must be so. You will not have to show me my books. I will take your word for it. There is no doubt in my mind about it, if the books show it. I don't know whether it is a fact that the Lenz contract was defaulted on November 1, 1920, two and a half months before I claimed we lost the Hamlin location. The contract register shows a contract with F. J. Lenz & Company for three years, dated 4-24-18 to run 36 months 6-1-18 to 6-1-21 at \$35 a month. We had two boards on the Hamlin location that were advertising Lenz. I don't see anything here to indicate whether or not that contract defaulted in November, 1920. If they paid, the entry in the book would show that. It looks here as though they had. I see these are all entered up here.

(The witness then testified that he was unable to find the Special Site Sign Company leases for the Southern Pacific property, the Lagomarsino property, the Catherine Hittel property, the Provensal property, the Rueter property or the property described as the "No Man's" piece south of the Tuolomne River near Modesto. He also stated that

(Testimony of Charles H. King)

Special Site Sign Company never had a lease on the Capwell property in Oakland at Broadway and Hobart Streets.)

Witness continuing: With respect to the Lagomarsino property I testified that there were no other advertising signs on that property when we were on it. That is correct.

With regard to the Coppa property, the northwest corner of School and Mission Streets in San Francisco, we consented that the sign on that location be removed. They had knocked us off the location. I leased that property from Mr. Coppa, who represented himself to be the owner. I don't know whether he was or not. I don't recall that he was in possession at the time. I believe I expressly testified that he was not the tenant at the time.

I got the terms of the lease which I say we had from Lagomarsino on the Los-Angeles-San Francisco Highway between Holy Cross Station and Baden from some of our records. All this data was gotten from records and what I could recall from memory. I remember testifying that at the time we took that lease that there were no advertising structures on the premises anywhere. I knew at that time that the property belonged to the Cowell Lime & Cement Company or the Cowell Estate. I leased the property myself. I had known it several years before I leased it and passed it frequently, looking for locations. I think I had my eye on it for a good while. It is not a fact that shortly before I got that property or at the time I got the lease on it from Lagomarsino that there were two bulletins on it. I am sure of that. There was nothing at

(Testimony of Charles H. King)

all there. There was no small pump-house on the premises.

We paid rent to Foster & Kleiser Company on the Hittell property on the Great Highway, Rivera Street, San Francisco. We paid rent to them in spite of the fact that we had a right to the property ourselves because they had secured a lease. We had live copy on the board and paid the rent to keep them from taking the board down.

I did not measure the dimensions of the lay-out of the property at Grove and University which I referred to as the P & B property. I never measured the distance from the northwest corner of Grove and University to the east edge of what I termed the easement. I would judge it was 90 feet. That is merely an estimate and the fact is that I don't know what the distance is. I did not place any qualification on the distance shown on my chart here, Plaintiff's Exhibit 200. I did not think it was necessary because the driveway, according to Mr. Williamson, was not under lease to anyone. Our lease is dated October 21, 1929 and that is when we got it. This lease from L. M. Williamson to Foster & Kleiser Company looks like the lease that Mr. Hughes showed me. It calls for property on University, north line, 90 feet west of Grove, 50 feet. I don't recall whether Mr. Hughes told me at the time that that 50 feet included the driveway. At the time we got the lease there were no signs on any of the locations shown on Plaintiff's Exhibit 200, parcels 1, 2 or 3. There was not a single board on any of them, to the best of my recollection, in October, 1929. Mr. Hughes did not tell me that this lease covered the driveway. I said in my direct testimony that he said it covered our sign. It was probably just after that that I ascertained that it did not cover the driveway. possibly a month later.

1896

(Testimony of Charles H. King)

The lease referred to *the by* witness was thereupon received in evidence and marked Defendants' Exhibit NNN in evidence, and is in words and figures as follows, to-wit:

[DEFENDANT'S EXHIBIT No. NNN.]

A-1

Copy delivered 2/12/30

[Crest]

Foster and Kleiser
COMPANY

Re-Newal
No Copy W. A. H.
No. 2088

City Berkeley, State Calif, Date Nov 19, 1928

In consideration of Five & no/100 (\$5.00) Dollars per year, payable Annually in advance, the undersigned Lessor hereby leases to Foster and Kleiser Company, Lessee, the exclusive use of the premises (with free access to and upon same) described as University N. L. 90' W Grove 50' Blk 2060 Por lot 1 Rental to be increased to \$12.50 per year when advertising structure is erected, if same is illuminated situated in the City of Berkeley, County of Alameda, State of Calif for a period of ten years from Sept 6th, 1928, for the purpose of erecting and maintaining painted, printed, or illuminated advertising signs, including necessary structures, devices and connections.

(Testimony of Charles H. King)

In the event said property is improved by erecting thereon a permanent building, this lease shall thereby be terminated; the Lessee shall, upon the return to it of all rent paid for the unexpired term of this lease and upon thirty days' written notice from the Lessor that such permanent improvements are to be made, remove said signs and structures from said property; in the event such improvements shall not be commenced within thirty days after the removal of such signs and structures, the Lessee shall have the right to re-enter said premises and reconstruct said signs and structures

In the event a portion only of the property is improved by erecting thereon a permanent building, the Lessee has the option of using the remaining portion on the same terms as herein provided except the rental shall be proportionately reduced.

If the view of the property or advertising signs is obstructed, or impaired, or the use of such signs is prevented by law, the Lessee shall have the right to cancel this agreement and receive all rent paid for the unexpired term of this lease, by giving the Lessor notice in writing of such obstruction, impairment, or prevention of use.

In the event a portion only of the view of the property or advertising signs is obstructed, or impaired, the Lessee has the option of using the remaining portion on the same terms as herein provided, except the rental shall be proportionately reduced.

After the term hereof, this lease shall continue in force from year to year unless terminated at the end of such

(Testimony of Charles H. King)

term, or any additional year thereof, upon written notice of termination by the Lessor or Lessee, served not less than thirty (30) days before the end of such term or additional year.

H

The Lessee shall protect and save harmless the Lessor from all damage to persons or property by reason of accidents resulting from the neglect or wilful acts of its agents, employees or workmen in the construction, maintenance, repair or removal of its signs on said premises.

The Lessee is and shall remain the owner of all signs and improvements placed by it on said property and has the right to remove same at any time.

In the event that the Lessee, for the purpose of improving the appearance of said property, shall place or plant gravel, lawns, shrubs or flowers thereon, or install water service pipes and fittings for the upkeep of said property, then the Lessee shall at all times be deemed the owner of such gravel, lawns, shrubs, flowers, pipes and fittings and shall have the right to dig up and remove same at any time.

The Lessor represents that he is the $\left\{ \begin{array}{l} \text{Owner} \checkmark \\ \text{Tenant} \\ \text{Agent} \end{array} \right.$ of the

premises above described and has the authority to make this lease. The word "Lessor" as herein used shall include and mean "Lessors."

(Testimony of Charles H. King)

It is expressly understood that Foster and Kleiser Company is not bound by any stipulations, representations, or promises not written or printed on this contract. This lease is binding upon the heirs, assigns and successors of both the Lessor and the Lessee.

Accepted by FOSTER AND KLEISER COMPANY,
Lessee.

Per H H Walters

L. M. WILLIAMSON

2816 Oak Knoll Terrace
Berkeley-

Signed:

L M Williamson

Lessors

Address

[On back]:

[Diagram of premises.]

No. 5673-C. Special Site vs. Foster & Kleiser Deft
Exhibit No. NNN Filed 1/8 1935 R. S. Zimmerman.
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: With regard to the John P. Snow property, our board was right in the pathway between the laundry building and the Temescal Creek bank. I missed our board right after Foster & Kleiser had built a poster on the north side of the creek. Their board faced north.

MR. CLARK: I now propose to show that Special Site Sign Company had instructions from the State to remove this board as a traffic hazard.

Mr. Clark thereupon showed the witness two photostatic copies numbered 403 and 404, respectively, of notices issued by the California State Department of Public Works, Division of Highways, Outdoor Advertising Section, notifying Special Site Sign Company of violations of the Outdoor Advertising Act of the State of California, California Statutes 1933, Chapter 341, page 938.

Witness continuing: I wouldn't be a bit surprised if we had not received the originals of these photostatic copies numbered 403 and 404 which you show me. This is another piece of Foster & Kleiser's work. That is State vandalism. This law was put through by Foster & Kleiser. The State has wrecked dozens of our signs illegally. This sign is absolutely according to the State law because there is 500 feet unobstructed view there. These people are all wrong. It don't matter if they did send that to us. I notice on this photostat under "12", it states, "obstructs a clear view of approaching vehicles inside of 500 feet". That is absolutely untrue. Those people ran over us

(Testimony of Charles H. King)

roughshod and ruined our signs absolutely contrary to all our rights. Foster & Kleiser were up there and Roy McNeill and Mr. Foster got that law through. It is absolutely my testimony that Foster & Kleiser by legislation set out to put us out of business. The State license law requiring payment of a license and requiring an imprint or tag of the owner of a board to be on it is also their nefarious work. Those things should not be. I don't know whether I received the originals of these photostats or not. I wouldn't doubt but what I did.

With regard to the Dos Reis property it was stipulated that the Carquinez Bridge was opened to travel on May 21, 1927.

Witness continuing: We paid \$50 down for our lease on the Dos Reis property to hold the lease until the Bridge was opened and to pay \$20 a month beginning with the opening of the Bridge to travel. I believe we started paying \$20 a month in May or June, 1927. The earliest rental check here in my file is dated November, 1927.

I recall writing the original of this copy of a letter to Mrs. O'Neil, dated May 8, 1924.

The letter referred to by the witness was thereupon received in evidence, marked Defendants' Exhibit QQQ in evidence, and was read to the jury. Said exhibit is in words and figures as follows, to-wit:

1902

(Testimony of Charles H. King)

[DEFENDANTS' EXHIBIT No. QQQ.]

SPECIAL SITE SIGN COMPANY
Oakland, Calif.

May 8, 1924

Mrs. Ria O'Neil
2444 Ashby St.,
Berkeley, Calif.

Dear Madam:

On February 20th we sold to F. B. Heider, #798 Post St., San Francisco, the sign on your ranch at the junction of the Happy Valley and Tunnel Roads. Up to that time we had three signs on your ranch, including the one sold to Heider. The other two are painted with copy as follows.

1. Standard Fence Co.
2. Federal Tire.

On January 25th I paid you \$29.00 rental covering these three signs from Feb. 1, 1924 to Feb. 1, 1925, divided as follows:

Sign Sold to F. B. Heider	\$12.00
Standard Fence Sign	12.00
Federal Tire Sign	5.00
	<hr/>
	\$29.00

Mr. Heider, hereafter, will take care of payments promptly on the Board purchased by him, and we will pay you rentals on the remaining two boards \$17.00.

(Testimony of Charles H. King)

Trusting this makes the matter clear to you, we beg to remain

Yours very truly,

SPECIAL SITE SIGN CO.

By (signed) Charles H. King
GENERAL MANAGER

CHK-MSM

DUPLICATE

No. 5673-C Special Site vs. Foster & Kleiser Deft Exhibit No. QQQ Filed 1/8 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: The thing that happened in the O'Neil property was that Mrs. O'Neil conveyed that property to her two daughters in 1924. We did not dispute the effect of that upon our lease rights but we disputed the fact that there was a transfer. When we found that there had been a transfer, we took our boards off. Our rights were at an end there then, but Foster & Kleiser's boards went on the property immediately after. I did not know of my own knowledge. It is not entirely correct to say that we, without consultation with Mrs. O'Neil, transferred to F. B. Heider the location on her property and attempted to substitute him for ourselves as a tenant, in May, 1924. We explained to Mrs. O'Neil what we were to her at the time.

(Testimony of Charles H. King)

BY MR. GLENSOR:

I know of my own knowledge that Foster & Kleiser's boards went on the property. They built them immediately.

BY MR. CLARK:

I don't recall receiving a letter from the Richfield Oil Company under date of August 8, 1929, in connection with the Garibaldi property north of Merced. My lease covering the Garibaldi property shows that the location was blocked out about April 15, 1929. There is a footnote on the lease stating, "Blocked April 15, 1929".

The contract register of Special Site Sign 'Company shows a Standard Fence Company contract dated January 17, 1924, to run for 36 months from March 1, 1924 to March 1, 1927, at \$78.75 per month. The register also shows that one of those locations was the Garibaldi location. Our unit price for that bulletin was \$15.75. The register also shows that it was agreed on March 3, 1927, that the contract should lapse, that is that they were not to make any further payments under it.

We were paying rent to Garibaldi and did not search the records to find out who the owner of the property was. Special Site Sign Company did not follow the custom to ascertain who the owner was. Garibaldi was in possession of this property and we leased from him sometime in 1919. I never heard that the property changed hands. I did not know that the Richfield Oil Company acquired a lease on that property from Mrs. Ashe for the purpose of constructing a landing field for airplanes. We were never notified by the Richfield Oil Company to remove our structures. I have no recollection of receiving the

(Testimony of Charles H. King)

original of this copy of a letter which you show me from the Richfield Oil Company.

The letter referred to by the witness was thereupon marked Defendants' Exhibit RRR for Identification.

Witness continuing: If we have not produced our lease on the Vignolo property on Cherokee Lane, I have not found it. There is nothing in our records here to show that we had a lease on that location but we never built signs on property where we didn't have a lease, with the exception of the property on the Tuolumne River, south of Modesto.

The memorandum that I used when I was testifying says that on November 28, 1924, "We attempted to secure a renewal of our lease two years in advance of its expiration but received no response from Mr. Vignolo." That date would make our lease expire in 1926. We lost our lease on April 23, 1928. The facts are that I can't recall the terms right now but there are records from which that could be determined. I testified on direct examination that our lease expired in 1926 and that Foster & Kleiser were on the property before that. I saw them on the property. I believe they built right next to the sign. I also testified on direct examination that Foster & Kleiser did not appear on the property until after our sign was removed and that that was in about 1925, before the expiration of our lease. I must have been mistaken on the

(Testimony of Charles H. King)

dates. In my direct testimony I stated that the beginning of the term of the lease on the Vignolo property would have to be determined by the record which Mr. Clark has, that is the contract register. I have now examined the ledger sheets and the contract register to determine the date it was lost. There is nothing on that sheet except where the property is situated and nothing with respect to the terms of the lease.

A letter from Mrs. M. A. Burns to Special Site Sign Company dated April 5, 1920, a letter from Foster & Kleiser Company to Special Site Sign Company dated June 26, 1922, a letter from Foster & Kleiser Company to Special Site Sign Company dated July 17, 1922, a letter to Foster & Kleiser Company from Special Site Sign Company dated July 19, 1922, a letter from Foster & Kleiser Company to Special Site Sign Company dated July 20, 1922, together with the invoice referred to in the letter of July 19, 1922 and the bill of sale referred to in the letter of July 20, 1922, were thereupon received in evidence and marked Defendants' Exhibit SSS and read to the jury. Said Defendants' Exhibit SSS in evidence is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[DEFENDANT'S EXHIBIT No. SSS.]

2319 Mission Street,
San Francisco, Calif.

April 5, 1920.

Special Site Sign Co.,
308—12th St.,
Oakland, Calif.

My dear Sirs.

The sign site adjacent to Max Roth's stoneyard in Colma, upon which you have an Ajax Tire Sign is my property and has been rented by me to Foster and Kleiser of this city. Kindly remove your sign at once and oblige

Yours truly

(Mrs.) M. A. Burns

L E G

1908

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
— COMPANY —

OUTDOOR ADVERTISING

273-295 Valencia Street
Telephone Market 10

San Francisco, Cal.
June 26, 1922

Special Site Sign Company
208 12th St.,
Oakland, California

Gentlemen: Attention, Mr. C. H. King

We would appreciate a reply to our letter of June 12th,
regarding the Ajax Tire bulletin on *Msr* Roth Monu-
ment Works opp. Holy Cross.

Very truly yours,

FOSTER AND KLEISER COMPANY

D. R. McNeill Jr.
San Francisco Manager.

VBS.

CHK

SAN FRANCISCO BRANCH

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser
— COMPANY —

OUTDOOR ADVERTISING

273-295 Valencia Street
Telephone Market 10

San Francisco, Cal.
July 17th, 1922.

Special Site Sign Company,
208-12th Street,
Oakland, Calif.

Attention: Mr. C. H. King

Gentlemen:

Replying to your letter with reference to the 50x10 Ajax Tire Bulletin on the Max Roth property beg to advise that in our opinion the price set on the structure of \$75.00 is considerably more than the bulletin is actually worth. However, upon your advice that \$50.00 would be acceptable, we will immediately mail check covering, together with bill of sale for your signature.

With regard to the display on Sloat Boulevard, this matter has been referred to our Mr. Young who has charge of our Leasing Department, and he will communicate with you further. However, there is no doubt that we can arrive at a solution mutually agreeable.

Very truly yours,

FOSTER AND KLEISER COMPANY,

by D. R. McNeill Jr.

DRMcN:OHB

San Francisco Manager.

SAN FRANCISCO BRANCH

1910

(Testimony of Charles H. King)

SPECIAL SITE SIGN CO.

Phone Oakland 300

308 Twelfth Street

[Photograph]:

PIG & WHISTLE CANDIES

Floating on San Francisco Bay

Fifteen Million People Annually Read this Sign.

Oakland, California July 19, 1922.

[Photograph]:

Oakland Suburban Electric Railroad systems carry 36,000,000 people annually. We cover them all.

[Photograph]:

To reach the automobile we have special locations on the Highway.

[Photograph]:

Our city locations are special. They cover the entire population with few signs, thus giving you maximum service at minimum cost.

Messrs. Foster & Kleiser,
273 Valencia St.,
San Francisco,
California.

(Testimony of Charles H. King)

Attention D. R. McNeill Jr.,

Gentlemen:-

In response to yours of July 17th we are enclosing herewith our invoice covering the 10x50' Ajax Tire Bulletin on the Max Roth property in accordance with your offer.

Thanking you in advance for your remittance to cover, we are,

Yours very truly,

SPECIAL SITE SIGN COMPANY.

By Charles H King,
Secretary & Manager.

FEN:D

[Stamped on face]: Hsk.√ Ass't Const. Paint
Post L Post D Sales Acct. RECEIVED JUL 20
1922 FOSTER & KLEISER COMPANY Purch.
Auto Nat'l Gen'l File√ Space Ans.....

Oakland California
Messrs. Foster & Kleiser
273 Valencia St., San Francisco

[Crest]

OAKLAND
TO SPECIAL SITE SIGN CO. DR.
CALIF.

308 Twelfth Street

To 1 - 10 x 50' Bulletin (Max Roth property)
as agreed

\$50.00

1912

(Testimony of Charles H. King)

[Crest]

Foster and Kleiser

— COMPANY —

OUTDOOR ADVERTISING

273-295 Valencia Street

Telephone Market 10

San Francisco, Cal.

July 20, 1922

Special Site Sign Company

308- 12th Street

Oakland, Calif.

Attention: Mr. Chas. A. King. [Written in red]

Gentlemen:—

Acknowledging receipt of your letter of the 19th inst., enclosing invoice, we return herewith our check in the amount of Fifty (\$50.00) Dollars; together with Bill of Sale in duplicate, one copy of which you will please sign and return for our files.

Very truly yours,

FOSTER AND KLEISER COMPANY

By D. R. McNeill Jr.

San Francisco Manager

DRMc:D

Incls. 3.

CHK

SAN FRANCISCO BRANCH

(Testimony of Charles H. King)

150

In consideration of the sum of Fifty (50) Dollars, receipt of which is hereby acknowledged, the Special Site Sign Co. has this day transferred, assigned, set over and sold, and does hereby sell, transfer, assign and set over unto Foster and Kleiser Company, the following described property, to wit:

One 10x50' bulletin board bearing the advertisement of Ajax Tires

on the side wall and roof of the building known as the
West
Max Roth Monumental Works, on the ~~South~~ side of the State Highway North of Cypress Lawn.

SPECIAL SITE SIGN CO.

By.....

FOSTER AND KLEISER COMPANY

By& D. R. McNeill J

Dated July. 20. 1922

CHK

No. 5673-C. Special Site vs. Foster & Kleiser Deft
 Exhibit No. SSS Filed 1/8 1935 R. S. Zimmerman,
 Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Witness continuing: It was my habit to sign my letters "Charles H. King" or "Charles H. King, Jr.," either way.

With reference to the Conti property, as I recall, our rental was raised there several times. Conti stated that Foster & Kleiser made contacts there with him and were willing to pay much more money. We did not hold the property. I believe we were unable to renew our lease there. Our rent was paid on that property in December, 1927. I believe we paid up all our rent. We do not have any of the rental checks on that property. I recall receiving this letter from Conti to the effect that he hadn't heard from us since June, 1923 and that if he didn't hear from us within five days, he would declare our contract null and void and pull down our sign; not anything like letters that Conti usually wrote us. That is his signature on it. I believe there is some mistake here. I think we had checks. The rental was paid.

I remember my testimony to the effect that we had a verbal lease on the Mary McDonald property at Claremont, north line, 35 feet on Telegraph Avenue. I can't recall offhand to what date we paid our rent. I can't say just how the rental was paid but we have cancelled checks that will show. I don't know whether it is a fact that we were in arrears in our rent between February 1, 1931 and August 29, 1931 or whether on August 29, 1931 we gave Mrs. McDonald a check stating, "Rent for March and

(Testimony of Charles H. King)

April \$16, balance \$24." We removed our structures from that property for the reason that she wouldn't let us go on it. She wouldn't let us go on the property because she said she could get more money. She wanted us to pay more and we were paying too much as it was. We were paying \$96 a year. I don't recall what it was she could get but she wanted us off because we were not paying enough. I don't know what she got. I don't recall examining Foster & Kleiser's office record card on that property. It may be that Foster & Kleiser got the property for \$50 a year and that we were paying \$96. I recall that the bill of particulars in this case cites that property as a piece of property for which Foster & Kleiser offered rental in excess of its value. I am not sure that they paid \$50. Their office record card may show it but I can't understand why she would take less.

Regarding my testimony about a piece of property which I called the Rankins property at 3108 Telegraph Avenue, I recall receiving this letter from Gillis & Edwards dated October 9, 1928. That matter was straightened out with Mrs. Coppage later. Mrs. Coppage was the owner of the property, and this letter is from people purporting to be her attorneys. It was in response to this letter that I called on Mrs. Coppage.

The letter referred to by the witness was thereupon received in evidence, marked Defendants' Exhibit TTT in evidence, and read to the jury. Said exhibit is in words and figures as follows, to-wit:

1916

(Testimony of Charles H. King)

[DEFENDANT'S EXHIBIT No. TTT.]

Kenneth C. Gillis

Darrell B. Edwards

GILLIS & EDWARDS

Attorneys at Law

Latham Square Building

16th Street and Telegraph Avenue

Oakland, California

Telephone Lakeside 3496

October 9, 1928

Special Site Sign Co.,
3225 Louise Street,
Oakland,
California.

Dear Sirs:

2515 Ashby Thornwall 1795

Mrs. Mary Shields Coppage / who owns the building at 38th and Telegraph known as 3801 and 3803 Telegraph Avenue has requested me to take up with you the matter of your sign and fixtures on the south wall of this building. Your sign and the fixtures were placed there without her approval and as she is desirous of doing some remodeling to the building, she desired me to request that you remove the sign and the fixtures from this property.

(Testimony of Charles H. King)

Will you kindly notify me when you will accomplish this.

Appreciating your early reply, we are

Yours very truly,

GILLIS & EDWARDS

Kenneth C Gillis

KCG:CB

BY

No. 5673-C. Special Site vs. Foster & Kleiser Deft
Exhibit No. TTT in evid Filed 1/8 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: The Naftaly property was a key location because it was on East 12th Street, one of Oakland's busiest thoroughfares. We had 4x6 structures on it. The east line of the property was about 25 feet. I don't recall exactly the value I placed on it. It would have been suitable for a 24-sheet illuminated poster. The dimensions of a 24-sheet illuminated poster panel are 25 by 10½ feet. We would have placed a 24-sheet poster panel on the Naftaly property by placing it on the east line. It was not a head-on shot.

The Banchemo location was 50 feet wide. I valued that at \$1,545. That was suitable for two 24-sheet illuminated bulletins. The Naftaly property is not suitable for an illuminated poster panel because it is a shorter shot. The traffic is possibly as heavy in front of the Naftaly property as it was in front of the Banchemo property but the

(Testimony of Charles H. King)

location was not as good as the Banchemo property; yet it was a key location. I don't believe it was suitable for a poster panel because it is too short a shot. Key locations are not necessary for 4x6 targets. The Naftaly location would have been suitable for a 9-sheet or a 3-sheet or a 4 by 6. I believe I placed a value of \$96 on the Naftaly location. In applying my formula I took the income that that type of sign would bring, which was \$4 a month, or over a period of six years, \$288. That was a key location. I could not have sold that account without locations of that kind. That account was with the Imperial Beverage Company.

I recall the Prout location. I don't recall its dimensions exactly but it was suitable for a 6-sheet or a 4 by 6 or a 9-sheet. That was also a key location. The locations on that street are very hard to secure. I valued it at \$72. A 9-sheet is three times the size of a 3-sheet. I could not say what the dimensions of a 1-sheet are, I never measured one. A 24-sheet poster is 9½ by 24 feet. I don't know the dimensions of a 9-sheet. It was never necessary to know.

In testifying on my direct examination with respect to the one-third that I added as an arbitrary figure to get the value of a location to represent the value of the plant as a whole, I stated that a nice bulletin on a key location created new business for our firm. As a result of the mess of bulletins on the Hamlin location, we got one of the biggest contracts that we ever had. We got the Champion Spark Plug account for that reason only and we got the Dreadnaught Tire Company for that reason only, notwithstanding what I called the mess of signs there; it was the location.

(Testimony of Charles H. King)

We offered to pay the Donaldson Lithographing Company a commission for posting its service posters. We offer to pay a commission to anyone that will sell our service. We agreed to pay the Donaldson Company a commission for posting their posters on our plant. Anybody in business knows that if you get business from somebody you expect to pay for it. Mr. Lewis, the Pacific Coast representative of the Donaldson Company, never called on me, although according to these letters he was instructed to do so. I never did see him. He did not call on me relative to this Ashby Furniture Company matter.

WEDNESDAY, January 9, 1935.

The following documents from Plaintiff's file were thereupon received in evidence and collectively marked Defendants' Exhibit UUU in evidence: Copy of a letter from Special Site Sign Company to Donaldson Lithographing Company dated November 12, 1925, letter from Donaldson Lithographing Company to Special Site Sign Company dated November 17, 1925, copy of a letter from Special Site Sign Company to Donaldson Lithographing Company dated August 22, 1929, letter from Donaldson Lithographing Company to Special Site Sign Company dated September 4, 1929, copy of a letter from Special Site Sign Company to Donaldson Lithographing Company dated January 23, 1930, letter from Donaldson Lithographing Company to Special Site Sign Company dated January 27, 1930, and two copies of agreements entitled "Service poster agreement" between the Donaldson Lithographing Company and A. F. Co., both dated August 26, 1925. Said letters and documents are in words and figures as follows, to-wit:

1920

(Testimony of Charles H. King)

[DEFENDANT'S EXHIBIT No. UUU.]

November 12, 1925.

The Donaldson Litho. Co.,
Newport, Kentucky.

Gentlemen:

We wish to know if we can secure from you at once samples of twelve different 24-sheet posters with designs suitable for a furniture concern, also samples of other lines, if possible, at your convenience.

Yours very truly,

SPECIAL SITE SIGN CO.,

BY

CHK-MSM

GENERAL MANAGER.

(Testimony of Charles H. King)

Established 1863

THE DONALDSON LITHOGRAPHING CO.

Incorporated

[Crest]

Commercial

Poster Advertising Service

Newport, Ky.

Please Attention Reply To
R. D. Carrel

November 17, 1925.

Special Site Sign Co.,

3225 Louise St.,

Oakland, Calif.

Attention - Mr. Chas. H. King, Gen. Mgr.

Gentlemen:

Replying to your favor of November 12th, you seem to be under the impression that we are manufacturers of stock posters and selling the same through such companies as yours or through poster advertising companies. Our business is not conducted on that basis at all.

1922

(Testimony of Charles H. King)

We manufacture a 24-sheet poster advertising service, furnishing local advertisers a different poster each month in the year. However, this service is sold through our own selling organization only, as a poster service posted on the poster boards, we being responsible to the advertiser for the proper conduct of the poster campaign. We have a working arrangement with practically every poster advertising plant of any consequence in the U. S. and have their showings and posting rates on file here in our office, so that we are able to quote advertisers from here or through our salesmen on a representative showing. Poster advertising plants throughout the country allow us a commission of 16-2/3% for whatever space is contracted for on their plants.

Our coast representative is in Los Angeles at the present time and we are referring your letter to him for investigation in reference to your service in Oakland.

Yours very truly,

THE DONALDSON LITHO. CO.

RDC:GB

BY R D Carrel

Sales Manager

(Testimony of Charles H. King)

August 22, 1929

Donaldson Lithographing Co.,
Newport, Kentucky.

Gentlemen:

Will you kindly send us by return mail samples of your stock posters (24-Sheet) and your best prices on same?

Thanking you for your immediate attention, we remain

Yours very truly,

SPECIAL SITE SIGN CO.,

BY

CHK-MSM

GENERAL MANAGER.

1924

(Testimony of Charles H. King)

The Donaldson Lithographing Co. Newport, Ky.
Incorporated

Throughout United States and Canada
POSTER ADVERTISING SERVICE

September Fourth 1929

Please Attention Reply To
R. D. Carrel

Special Site Sign Co.,
Oakland, Calif.
Attention - Mr. Chas. H. King

Gentlemen:-

We do not manufacture a line of stock commercial posters, excepting a line of posters that we sell direct to advertisers, as an advertising service, posted on the poster boards.

All of our customers have the exclusivse use of our service posters in their territory that they cover and that is one of the reasons why we sell only through our own selling organization, on our own contracts.

We regret that we do not have any samples to send you, as requested.

Yours very truly,
THE DONALDSON LITHO. CO.
BY: R D Carrel
Sales Manager

RDC:GB

(Testimony of Charles H. King)

Jan. 23, 1930.

The Donaldson Lithographing Co.,
Newport, Kentucky.

Attention: R. D. Carrel, Sales Mgr.

Gentlemen:

An old client of yours, the Ashby Furniture Co., Adeline & Alcatraz Ave., Berkeley, has transferred their advertising account from Foster & Kleiser to this company.

While the business was on the plant of Foster & Kleiser your company furnished the posters and we would like to know if you would continue to supply these posters if the Ashby Furniture Co. wants them.

Awaiting your early response, we are

Yours very truly,

SPECIAL SITE SIGN CO.,
BY
GENERAL MANAGER.

CHK-MSM

1926

(Testimony of Charles H. King)

[Letterhead.]

The Donaldson Lithographing Co. Newport, Ky.
Incorporated

POSTER ADVERTISING SERVICE

Throughout United States and Canada

January Twenty Seventh

1930

Special Site Sign Co.,
Oakland, Calif.

Please Attention Reply To
R. D. Carrel

Attention—Mr. Charles H. King, Gen. Mgr.

Gentlemen:—

Replying to your favor of the 23rd, our posters for the Ashby Furniture Company were sold as an advertising service, posted on the poster boards, as for the furniture business we publish a series of posters, giving the advertiser a new design each month in the year.

We receive from all poster advertising companies, with whom we place business a regular solicitor's commission of 16-2/3% for all business that we place and do not sell in any other manner.

We have no record of your plant and do not know what your showings are or your rates. If you will send us this information, we perhaps can do some business with you. That is, if you want to operate the way we sell. You will understand that our service is sold only to an advertiser in each line in a town.

Yours very truly,

THE DONALDSON LITHO. CO.

BY: R D Carrel

Sales Manager

RDC:GB

(Testimony of Charles H. King)

Form 1052

No.....

Classification

SERVICE POSTER AGREEMENT

THE DONALDSON LITHOGRAPHING
COMPANY

NEWPORT, KY.

Date Aug. 26 - 25

Purchaser Ashby Furniture Co.

Street Address..... Town Berkeley, Calif.

We hereby order Poster Service, for Six months, to consist of 8 - 24-sheets per month, for which we agree to pay The Donaldson Lithographing Company, Newport, Ky., \$34.40 per month, the entire contract to amount to \$206.40. Each month's service to be paid for not later than ten days after the expiration of that month's display.

1928

(Testimony of Charles H. King)

It is understood that this service includes pictorial sheets of a different design each month, during the life of this contract. Posters to be displayed on the poster advertising boards in Alameda & Berkeley

Display to commence Jan. 24, 1925 and continue for a
alternate
period of six ~~consecutive~~ months;

It is distinctly understood that no agreement or promise has been made in reference to this contract that is not stated hereon, and there is no verbal understanding of any kind that can in any way affect the terms of this agreement.

It is understood that The Donaldson Lithographing Company will not sell this service to any of our competitors for display in the city or cities herein contracted for during the life of this contract.

In consideration of the acceptance of this order, recognizing necessary quantity production involving advanced expenditures and because of the necessity of reserving space for the entirety of the contract, it is hereby understood and agreed that no part of this contract can be countermanded or cancelled. This agreement is subject to the contingencies of transportation and strikes or unavoidable accidents and delays beyond the control of the Donaldson Lithographing Company, and is also subject to acceptance by an officer of said Company.

(Testimony of Charles H. King)

(DESIGNS TO BE POSTED AS FOLLOWS)

Amount	Size	Number	Month to Be Shown
			Jan. 24
			Mch. 24
			May 24
			July 24
			Sept. 24
			Nov. 24
Amount	Size	Number	Month to Be Shown
		
		
		
		
		
		

COPY FOR ADVERTISEMENT

Same as Oakland.

(Please bear in mind that your poster will be most effective with the least copy possible.)

REMARKS: Above is for posters only. Does not include space. Ship posters to Oakland

Purchaser A. F. Co.
S G B Secty Treas

Salesman Lewis.

(Customer)

1930

(Testimony of Charles H. King)

Form 1052

No.

Classification

SERVICE POSTER AGREEMENT

THE DONALDSON LITHOGRAPHING
COMPANY

NEWPORT, KY.

Date Aug. 26 - 25

Purchaser Ashby Furniture Co.

Street Address..... Town Berkeley, Calif.

We hereby order Poster Service, for Six months, to consist of 16 - 24-sheets per month, for which we agree to pay The Donaldson Lithographing Company, Newport, Ky., \$68.80 per month, the entire contract to amount to \$412.80. Each month's service to be paid for not later than ten days after the expiration of that month's display.

(Testimony of Charles H. King)

It is understood that this service includes pictorial sheets of a different design each month, during the life of this contract. Posters to be displayed on the poster advertising boards in Oakland, Calif.

Display to commence Dec. 24 - 1925 and continue for a
alternate
period of Six consecutive months;

It is distinctly understood that no agreement or promise has been made in reference to this contract that is not stated hereon, and there is no verbal understanding of any kind that can in any way affect the terms of this agreement.

It is understood that The Donaldson Lithographing Company will not sell this service to any of our competitors for display in the city or cities herein contracted for during the life of this contract.

In consideration of the acceptance of this order, recognizing necessary quantity production involving advanced expenditures and because of the necessity of reserving space for the entirety of the contract, it is hereby understood and agreed that no part of this contract can be countermanded or cancelled. This agreement is subject to the contingencies of transportation and strikes or unavoidable accidents and delays beyond the control of the Donaldson Lithographing Company, and is also subject to acceptance by an officer of said Company.

1932

(Testimony of Charles H. King)

(DESIGNS TO BE POSTED AS FOLLOWS)

Amount	Size	Number	Month to Be Shown
			Dec. 24
			Feb. 24
			Apr. 24
			June 24
			Aug. 24
			Oct. 24

Amount	Size	Number	Month to Be Shown
		
		
		
		
		
		

COPY FOR ADVERTISEMENT

Same copy, but make up sheet — of color scheme, for new background Mail for approval.

(Please bear in mind that your poster will be most effective with the least copy possible.)

REMARKS: Above is for posters only. Does not include space

Purchaser A. F. Co.
S G B Secty Treas

Salesman Lewis

(Customer)

[Endorsed]: No. 5673-C. Special Site vs. Foster & Kleiser Deft. Exhibit No. UUU for indent. part for ident and part in evid. Filed 1/8 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: The letter of November 17, 1925 from the Donaldson Lithographing Company contains some underlining in pencil under some words in the seventh line in the second paragraph. That is my underlining. I got those two copies of the agreements dated August 26, 1925 from the Ashby Furniture Company.

In December, 1920 the Special Site Sign Company took steps to increase its capital stock and increase the number of shares. Up to that time we had a total of 48 shares issued, of which 12 stood in the name of myself as trustee and 12 stood in the name of my brother Joe King as trustee. We increased the stock by 24 shares in December. We did not give any notice to Foster & Kleiser or to Walter F. Foster or to George W. Kleiser that that action was contemplated, nor did we give them any notice afterwards.

BY MR. STERRY:

In answering Mr. Glensor's hypothetical question as to the amount of increase in business we would have made, I assumed the facts in that question to be true. I would not say that I had gone over those facts and elements with my counsel nor that I helped to frame the question. I own a large majority of the stock in the Special Site Sign Company and I am president and general manager. I sure am interested in getting as much damages as I can legitimately. I went over the elements that I thought made up the damage with Mr. Glensor. I don't know that I went over the various elements with my counsel on the question of

(Testimony of Charles H. King)

damages before the hypothetical question was propounded to me. I suppose I did. In accordance with the question, I assumed that from 1919 to 1930, inclusive, Foster & Kleiser had not acquired 97 independent companies operating in 342 cities on the Pacific Coast, and that the Special Site Sign Company had not lost upwards of 60 locations through various activities of Foster & Kleiser. I took those elements into consideration. In my opinion that was a material element. The number of boards given there, 60, was my fair judgment as to the number of locations I had lost.

I testified as to the approximate cost of removing and constructing the different sizes of boards. That was gathered from my experience in constructing boards throughout the time I have been in business. From 1916 to 1930 I have stated that we constructed about 2,000 boards altogether. That is my very best and fair estimate of the approximate number that we built. When I say that we constructed 2,000 boards I took everything into consideration, the Champion Spark Plug boards that were manufactured and sent out to us, but when I said that we had erected approximately 2,000, I was referring to what I myself had constructed. We constructed those Spark Plug boards. The largest number of advertising structures outside of those Champion boards that we have ever maintained in our plant in any one year was maybe three or four hundred. To the best of my knowledge, we had as many as three or four hundred boards in one year, not counting these Spark Plug signs. I couldn't say in what year we had 300 boards. We now have about 200. I can't answer your questions as to how many boards we

(Testimony of Charles H. King)

had before we started doing any posting. Those are questions that can't be answered without the books. I can't remember any definite number.

In the hypothetical question propounded to me by Mr. Glensor there is an assumption that we have been interfered with in our business and interfered with in the development of our plant and also that we have not been able to get national business. I remember those elements. I assumed them in answering the question. I attribute our greatest loss of profits to the business we never secured. It is not a fact that during all of the time that I have been testifying about that we did not have a sufficient plant on which to have conducted any national business or Pacific Coast national business of any size. I would not say it was true at all. Our plant was in a position to handle national accounts. We were in a position to increase the size of it. We were in a position that if we had gotten the business under the right conditions, we could have increased our plant sufficiently to have taken care of that business, but not with the competition that we were battling. Assuming conditions to be as I have known them always to exist, I would not say that we were in a condition to handle any national business if we had gotten it. We were hardly able to keep going. We really deserved credit for being in business. The fact that our plant was not adequate had everything to do with our failure to attract national business. Foster & Kleiser was the cause. I stated that we had not been able to go into the poster business because I understood that we could not get posters. I have testified that, assuming an ideal condition, that if we had not been confronted with the

1936

(Testimony of Charles H. King)

competition of which I complain, we would, in my opinion, have made a net profit of 25 per cent from the time we went into business in 1916 up until the time the depression came in 1930. That is my honest opinion. There is nothing speculative about it. The only way we could make profit was through sales. We had no other income except selling advertisements.

In my formula as to the value of advertising sites I took as one element 25 per cent of the gross income that I thought we should have gotten from any one site. We never found it necessary to carry any secured unbuilt space. We were never able to carry it. I figure that we would make 25 per cent profit from each one of our signs if we had been unmolested on our key locations.

I also stated that under ideal conditions we would have had an annual increase of 31.6 per cent in our gross income up to 1930. If we had made that increase we would have had to increase our plant very rapidly. Our overhead would not have increased very much. I think we could have handled a 31.6 per cent increase each year without increasing our office force very much. We would have had to increase it some. After five years our business would have increased over 150 per cent. That would have increased our office overhead probably five per cent. If we were getting an increase of 31 per cent. each year we would have had to lease new locations and would probably have had to lease locations that we did not build on right away, and we would have had to have a lot of our boards blank to be able to accommodate business as it came to us. In figuring my percentage I figured an overhead of 20 per cent. I did not make any allowance for increased over-

(Testimony of Charles H. King)

head and increased rental expenses due to the increased business. I figured the profits that I talked about coming to us under a condition where we had no unfair competition whatever. We have never operated under fair conditions. I don't know of any other advertising company in the country, whether belonging to what I call the trust or otherwise, that has made 20 per cent on their gross business at any time. I haven't paid any attention to what other people have done. I know what I could do. We have made 25 per cent on lots of our contracts.

BY THE COURT:

We have made 25 per cent and more on individual business that we have handled for our clients. I could point out specific locations where we did that.

BY MR. STERRY:

I couldn't say what the highest net profit is that we ever made on our whole business during any one year. I would have to refer to the books for that. I did not consider that if conditions were ideal and there was no unfair competition so that we could just go ahead and make 20 to 25 per cent, that a great many other independent companies would have also come into the field. Assuming that Foster & Kleiser Company had not unfairly competed with us or if they had been eliminated entirely and had just walked out of California and left Oakland to us alone, that would be a Utopia. Assuming those facts, a great many other people could come into the field and make 25 per cent.

(Testimony of Charles H. King)

I am not prepared to say how many. I think our loss of profits was due both to our inability to get the national advertising and the inability of our plant to give the proper showings. Foster & Kleiser are responsible for both. We were unable to attract national advertising because we had nothing but odds and ends to sell. We have never been able to get together a full quarter showing or half showing. We were lucky to have any kind of a showing. It is not a fact that on or about June 7, 1929 Mr. Westbrook and I called upon Mr. Harris, a local representative of the American Tobacco in Oakland and emphatically pointed out to him that the independent advertising concerns on the Pacific Coast had far better advertisements than Foster & Kleiser. I don't think that is a fact at all.

This copy of a letter in my file from Mr. D. G. Westbrook to H. J. Mahin, dated June 8, 1929, is a copy of a letter to Mr. Mahin which Mr. Westbrook sent to me. Mr. Mahin was our agent in New York. It is dated June 8, 1929 and reads in part as follows:

"Yesterday, accompanied by Mr. King, Manager of the Special Site Sign Company of Oakland, California, call was made upon Mr. Tom Harris Pacific Coast Manager of the American Tobacco Company. A rather lengthy solicitation was made and it was pointed out to Mr. Harris that the independent outdoor advertisers on the Pacific Coast were in a position to give them a better poster service than they are now receiving from the Foster & Kleiser Company and other companies in certain large coast cities.

* * * * *

(Testimony of Charles H. King)

“OAKLAND. We offer the Oakland plant at the same price; a quarter showing is 8 illuminated and 8 unilluminated. If the advertiser should want to vary the number of panels in each city, he can do so. If he would rather have more illuminated panels and fewer unilluminated or vice versa, it can be arranged.”

Witness continuing: That does not refresh my recollection about the conversation which Mr. Westbrook and I had with Mr. Harris. The first paragraph of that letter refers to “better service”, it doesn’t say better showings. Service consists of upkeep on the board and the type of board and so on. Our boards were more individual and higher from the ground, and such things as that.

Q Well, but, Mr. King, you would not have a better service if, altogether, you had a poorer showing, would you?

A That is the sales talk by Mr. Westbrook there, and that is Mr. Westbrook’s opinion. He would naturally put his best foot forward in his sales talk.

Q I am asking you a question, please answer it yes or no. You would not give better service to an advertiser if you gave a poorer showing, would you?

A Well, that is a question.

Witness continuing: I still say that we had never been able to get together a complete showing or a half showing or a quarter showing.

Mr. M. F. Reddington solicited business for independent companies. I sent this letter in the file, dated December 5, 1930, which reads as follows:

1940

(Testimony of Charles H. King)

“F. M. Reddington, Inc.,
Fuller Building,
57th Street at Madison Avenue,
New York.

Dear Sir :

“In anticipation of a continuance of the Camel business, we rounded out our poster plant so that we can now give the best full showing of posters that was ever displayed in Oakland.

“We are enclosing a spotted map and list of locations which will enable you to visualize our display. All of our panels are on main streets entering Oakland, and a large portion of them are downtown locations. They are 75 per cent individual panels.

“Our price is \$35 for illuminated panels and \$7.80 for unilluminated panels, which we will sell on a basis of one third illuminated and two-thirds regular. This makes our average price \$16.87 per panel.

“We appreciate the business we have received from your agency in the past year, and trust that you will be able to place some of your other accounts on our plant in the near future.

“Very sincerely yours,

“SPECIAL SITE SIGN COMPANY

“BY General Manager.”

(Testimony of Charles H. King)

Witness continuing: I do not want to change my testimony about having a full showing or half showing. When I told him that we had the best full showing in Oakland that was for him to decide. He came out and checked it. There is nothing in this letter stating that he was to decide whether it was a full showing or not. That was a sales talk, that is all I have got to say for that. It was more or less true. It was true enough so that I sold it to him. We had the Camels one year. I believe the interference of Foster & Kleiser had something to do with losing it because the combine put Reddington out of business. Foster & Kleiser interfered with our Camel showing and that was one of the causes of our losing it, no doubt. I think it was that and the fact that Reddington went out of business which was responsible for the loss of the business. I really think that those two factors lost the Camel business for us. I don't know that it is a fact that due to the depression they asked us to make some changes that we were unable to meet and that Reddington thereupon placed the business somewhere else. We made some concessions.

I received this wire on November 1, 1930 from M. F. Reddington:

1942

(Testimony of Charles H. King)

“SPECIAL SITE SIGN COMPANY

“32 and LOUISE, OAKLAND, CALIFORNIA.

“DUE TO CHANGED ECONOMICAL CONDITIONS IN BUSINESS THE R. J. REYNOLDS TOBACCO COMPANY HAVE BEEN ABLE TO BUY COMMODITIES AT A LOWER RATE AND THEIR POSITION IN REGARD TO OUTDOOR ADVERTISING FOR NEXT YEAR IS AS FOLLOWS STOP THEY ADVISE US THAT THE ONLY WAY THEY WILL CONSIDER ANY FURTHER POSTER ADVERTISING IS ON THE FOLLOWING BASIS STOP ALL TOWNS OF UNDER THREE THOUSAND POPULATION ARE TO BE DISCONTINUED STOP THEY WOULD BE WILLING TO EXTEND THEIR PRESENT CONTRACT FOR A FURTHER TWELVE CONSECUTIVE MONTHS IN ALL OF THE TOWNS IN WHICH THEY ARE NOW POSTING WITH YOU WITH A POPULATION OF THREE THOUSAND AND OVER PROVIDED THEY SECURE A FIVE PER CENT DISCOUNT FROM ALL PLANT OWNERS FOR THIS TWELVE MONTHS CONTRACT STOP THEY WILL NOT POST AT ALL UNLESS THEY RECEIVE ONE HUNDRED PER CENT ACCEPTANCE OF ALL THE PLANT OWNERS TO THIS PROPOSITION STOP THIS CONTRACT WOULD CARRY THE USUAL NINETY DAY CANCELLATION CLAUSE WITH THE UNDERSTANDING THAT IN THE EVENT OF CANCELLATION THIS FIVE PER CENT DISCOUNT WOULD BE REFUNDED TO YOU STOP TO

(Testimony of Charles H. King)

HAVE POSTERS READY FOR JANUARY THERE IS NOT ONE MINUTE TO SPARE THEREFORE WE MUST HAVE A DEFINITE DECISION FROM YOU THIS DAY BY WIRE.

M. F. REDDINGTON, INC.”

Witness continuing: We made the concession. I will look through the file and produce an answer to that wire. I received this letter dated November 10, 1930 from M. F. Reddington, Inc. which reads as follows:

“Special Site Sign Company,
Oakland, California.

Gentlemen:

“This will acknowledge receipt of your reply to our night letter of October 31st.

“We regret very much that you were not able to see your way clear to accept the conditions mentioned in our wire regarding the extension of the R. J. Reynolds Tobacco Company contract.

“In view of the fact that we were unable to secure 100 per cent acceptance of the proposition as outlined in our telegram, we are compelled to advise you that the R. J. Reynolds Tobacco Company Will not place a 12-months’ contract for next year.

“Yours very truly,

“M. F. REDDINGTON, President.”

1944

(Testimony of Charles H. King)

Witness continuing: We did accept it and we did make the concession. I don't understand that paragraph in the letter, "We regret very much that you were not able to see your way clear to accept the conditions mentioned in our wire." but I think I can produce our letter showing we made the concession.

With reference to the letter of December 5, 1930 which you have already read, in which I point out that we have rounded out our showing, we can call anything a showing.

Even in view of the fact that the letter from Reddington dated November 10, 1930 tells us that their contract is going to be cancelled, it is still my opinion that it was Foster & Kleiser's interference with our boards and Reddington's going out of business that caused us to lose that contract.

We received this letter dated January 24, 1931 from the Reddington agency, signed by R. C. Grahl:

"Dear Mr. King:

"We have an advertiser who is interested in a half showing in Oakland for three months commencing May 1, 1931.

"We would like to know whether or not you have a showing available, chiefly the locations formerly used for Camel.

"In one of your letters to us last year you stated that your allotment would necessarily be on the basis of 60 per cent regulars and 40 per cent illumination. An allotment of that type would be satisfactory.

(Testimony of Charles H. King)

"If you are in a position to take care of a contract of that nature, please advise us immediately by wire, and submit to us in writing by air mail, a list of the locations which you would use on this 40 per cent-60 per cent basis. Also, let us know what assurance you can give us in the matter of service.

Yours very truly,

"R. C. GRAHL."

Witness continuing: Mr. Grahl was the checker for the Reddington Company. By a half showing I think he meant what we considered a half showing. We considered a half showing as what we had. I told Mr. Clark that a full showing was 72 and a half showing was 36, but a plant owner can call anything a showing. We don't have to abide by Foster & Kleiser's determination of what is meant by a half showing. I think he meant whatever he said in the letter there. I don't remember my reply to that last letter without having it shown to me. I sent this telegram dated January 26, 1931, which reads as follows:

"OAKLAND, CALIFORNIA, JANUARY 26, 1931.

"MR. R. C. GRAHL.

"CAN FURNISH EXCELLENT HALF SHOWING OF THIRTY-SIX PANELS IN OAKLAND FOR THREE MONTHS COMMENCING MAY FIRST ON SIXTY FORTY BASIS AS PER YOUR LETTER OF THE TWENTY-FOURTH. LIST AND LETTER GOING FORWARD AIR MAIL. THANKS FOR INQUIRY.

"SPECIAL SITE SIGN COMPANY."

(Testimony of Charles H. King)

Witness continuing: That was my opinion of the thing, but nevertheless we did not have what an expert would call a half, quarter or full showing. I have told Mr. Clark that a full showing for Oakland was 72, 36 and 18. That is not the only factor that enters into it, it is the streets they are on.

THE COURT: Q Mr. King, for my exclusive benefit, and I have no doubt everyone else in the court room knows it, and I have no doubt that heretofore it has been explained, but I do not now remember it. Tell me what you mean by a full showing and half showing and a quarter showing. What do you mean by it?

A Well, a full showing, your Honor, is a certain number of posters, and those posters have to appear on all of the main arteries of the city. A full showing would be a more intensive showing than a half showing, and a half showing would be more intensive than a quarter showing.

Q Let me interrupt you at this point, you said a certain number. Does it mean any specific number.

A Not necessarily.

Q Going back to the full showing.

A It does not necessarily mean a specific number.

Q Is the question of whether or not it is a full showing affected by a proportion of what you might call minor sites or major sites, of what you call lesser value and greater value? I mean by that that you have a valuable site and it is on a main thoroughfare.

A Yes, sir.

Q And you have a site in a more retired neighborhood, we will say?

A Yes, sir.

(Testimony of Charles H. King)

Q Now, is the question as to whether it is a full showing or not affected by any proportion between the one kind or the other? That is the good sites and the less desirable sites?

A Well, there has to be a fair distribution. A full showing for instance might have four posters on a main artery, and four on a secondary artery.

Q Well, all right. But that does, to a certain extent, affect the question as to whether or not it is a full showing?

A Oh, yes. Any full showing, real showing of posters has to be, has to include these main arterials.

Q Would there be any difference between a full showing by you and full showing by Foster & Kleiser who, as I suppose, has a greater number of sites than you have?

A Yes, there could be. Our full showing I believe is 72 and their's are, I believe, 72. But it does not necessarily have to be the same. We could claim that a lesser number is a full showing.

Q The difference between the full showing and half showing is made up by the difference in the number of locations where you show the sign, is that correct?

A That is right. A full showing, half showing and quarter showing all cover the same streets or thoroughfares, but it is a matter of intensity. A full showing might have four posters on the main arteries, and a half showing two, and a quarter showing one.

Q Would a full showing in Oakland, as defined by Foster & Kleiser, have any reference to what they did in a district like San Francisco or Los Angeles?

A No, I don't think so.

1948

(Testimony of Charles H. King)

Q It would be confined to that particular locality of Oakland?

A Yes, sir.

Q The territorial limits of the city?

A That is right.

THE COURT: I don't like to interrupt you, Mr. Sterry, but that was for my personal benefit.

BY MR. STERRY:

Mr. Grahl, in his letter of January 24, 1931 asking us if we had a half showing, probably meant a half showing such as Foster & Kleiser Company could deliver but in my reply stating that we could furnish an excellent half showing, I meant a half showing such as we could deliver. I understood when I got his letter that he was asking for a half showing comparable to Foster & Kleiser's. I imagine that is what he meant. I knew that our half showing was not comparable to Foster & Kleiser's.

Q Then you intended to deliberately deceive him, did you, when you wired back "We can furnish excellent half showing of 36 panels in Oakland for three months commencing May 31st"?

A I would not say that was excellent from my point of view, it was the best I had.

Witness continuing: I did not know that he was inquiring about something else. I suspected it. I would not say that all of our locations were key locations. I am not applying the formula to all locations. It could be applied to all as the formula adjusts itself as the income varies. All of these 60 odd locations that Foster &

(Testimony of Charles H. King)

Kleiser took away were all key locations. There are a limited number of key locations in a city.

I wrote this letter of January 26, 1931 to Mr. R. C. Grahl, which reads as follows:

“Dear Mr. Grahl:

“We wish to thank you for your letter of the 24th instant and have wired you in reply as follows:

“‘Can furnish excellent half showing of 36 panels in Oakland for three months, commencing May 1st on 60-40 basis as per your letter of the 24th. List and letter going forward air mail. Thanks for inquiry.’

“Enclosed herewith you will find list of locations, also spotted map, which will show the distribution of the panels. The locations prefixed with a star are panels which you selected on your last inspection of our plant on October 4th to replace Foster & Kleiser panels which you did not approve of.

“We would call your attention to the large number of individual locations, also the greater part of the panels are ones used by Camel, as indicated on list. The other panels are new ones built by us to round out the Camel showing and take the place of the Foster & Kleiser panels, and we can assure you, knowing your requirements, these new poster boards are even better than the ones used by Camel.

1950

(Testimony of Charles H. King)

“This will give your advertiser a wonderful coverage in Oakland, and we hope to receive your order.

“Yours very truly,

“SPECIAL SITE SIGN COMPANY

“By, General Manager.”

“P. S. We guarantee a three-months' showing, with posting monthly, and panels to be kept in excellent condition during term of contract.”

Witness continuing: When I wrote that letter I knew that we had only odds and ends and not a full showing or a half showing, but of course you could not expect me to tell him they were not so good. I did not intend to deceive the advertiser. I knew the advertiser was going to check the locations.

I received this letter dated Jan. 31, 1931 signed by R. C. Grahl which reads as follows:

“Recently we made an inquiry regarding space for a half showing for three consecutive months, beginning May 1, 1931.

“We asked you to furnish us with a list of locations which you could offer for those months.

“For your information, the space in question is for the General Cigar Company, Inc.

(Testimony of Charles H. King)

“However, this letter is to advise you that under no circumstances are you to call upon the General Cigar Company offices or their exclusive distributors in your town or territory.

“It appears that some plant owners have done this, and it has caused the General Cigar Company, New York City, much concern. They are considerably disturbed that the plant owners should take it upon themselves to solicit their sales force prior to the time the General Cigar Company had set aside for this matter.

“You will, therefore, please refrain from taking up any subject whatsoever on this posting with the General Cigar Company LOCAL SALES OFFICES until you have further information from us or the General Cigar Company, New York City.

“Any matters pertaining to this inquiry should be handled through us as we have made plans with the General Cigar Company’s New York offices to handle the situation properly and any action taken on your part now will be very disturbing to all concerned.

“Kindly acknowledge receipt of this letter.

“R. C. GRAHL.”

Witness continuing: In answer to that I sent this letter of February 6, 1931, which reads as follows:

1952

(Testimony of Charles H. King)

“February 6, 1931.

“Re: General Cigar Company, Inc.

“Mr. R. C. Grahl.

“Dear Mr. Grahl:

“We are in receipt of your letter of the 31st ult. and in reply we wish to assure you of our utmost compliance with your request.

“We would like to call your attention to the fact that we have more than doubled our plant and that we have another half showing available. Trust you will be able to use this also.

“With very best personal regards and looking forward to seeing you again in our city before long, we remain.

“Sincerely yours,

“SPECIAL SITE SIGN COMPANY

“BY, General Manager.

Witness continuing: I signed that letter and the checker checked it and he did not believe it because it did not include some of the main arterials that it should have included. When I said we had another half showing I meant that is what we called a half showing. When I testified that we had never gotten together a half showing or quarter showing, I meant just exactly that; that we had not gotten together a showing that an expert would call a full or half or quarter showing. I also testified that it was the policy of our company never to compare our

(Testimony of Charles H. King)

showing with other competitors and just to sell them on their merits. The letters show that we made some comparisons. I signed and sent this letter of March 14, 1931 to Mr. R. C. Grahl which reads as follows:

“Dear Mr. Grahl:

“We would like, if possible, to know definitely whether the half showing for the General Cigar Company, Inc. for three months, beginning May 1, 1931, concerning which you corresponded with us in January, is to be taken on our plant.

“Thanking you for your early advice, we remain,

“Very truly yours,

“SPECIAL SITE SIGN COMPANY

“By, General Manager.”

And received from Reddington this letter dated March 31, 1931, which reads as follows:

“Gentlemen:

“Replying to your letter of March 14th, we wish to advise that this contract has not been placed as yet.

“The writer has had an opportunity to look over the map which you have spotted and notices that in submitting the locations you have included some panels that are not inside of the city.

“As we are buying the other towns individually, we do not want any Oakland panels to be in Richmond and San Leandro, California.

“What we want is a showing strictly in Oakland, and panels facing into retail outlets. If you have a better

1954

(Testimony of Charles H. King)

showing that what you have already submitted, please let us hear from you further.

“For instance, illuminated location 32nd and Louise Streets, on Key Route System is not a good panel for a cigar account. A regular there would be all right as that is not a point where cigars can be purchased and it does not make a good illuminated panel for a cigar display.

“If you want to revise your locations and map, please do so at once. We will hold this matter open for a short time.

“Yours very truly,

“R. C. GRAHL.”

Witness continuing: My reply to it is dated April 3, 1931 and reads as follows:

“April 3, 1931.

“Mr. R. C. Grahl,
The Reddington Agency, Inc.,
41 East 57th St.,
New York, N. Y.

Dear Mr. Grahl:

“Your letter of the 31st ult., regarding General Cigar Co. Inc. at hand. Since submitting you our list, we have an illuminated panel available on the East side of Broadway, between 19th and 20th Sts., reading toward 14th & Broadway, which is the center of Oakland. This is a beautiful location, being the closest 24-sheet panel to the center of the city. We would be willing to substitute this

(Testimony of Charles H. King)

for the illuminated panel at 32nd & Louise Sts., (#13 on the list). This is an individual panel.

“We note that you do not want us to submit any locations outside of Oakland and you may, therefore, substitute the following for ones outside the City, shown on our list:

* * * * *

“With the above changes in our list of 1-26-31 all panels will be in the City of Oakland and this will give you the best showing in the City. The panels we offer are 60% individual, all on main thoroughfares and facing into retail outlets.

“Hoping to receive definite advices at an early date, we remain,

“Sincerely,

“SPECIAL SITE SIGN CO.,

“By General Manager.”

Witness continuing: When I said that “and this will give you the best showing in the City” I was probably a little enthusiastic about the showing. I can’t say that that statement was exactly true. I knew that there were a lot of streets that we should have been on that we weren’t on, but I was trying to sell our showing. I can’t say it was exactly true, but I think my testimony as to damages is true.

We received this letter of April 7, 1931 from the Reddington Agency signed by Mr. Grahl, which reads as follows:

1956

(Testimony of Charles H. King)

“April 7, 1931

“Special Site Sign Co.

“Attention Mr. King.

“Gentlemen:

“With reference to your letter of April 3rd, regarding the General Cigar Company’s campaign for May, June, and July, in Oakland, Calif., we wish to advise that it is impossible to reach a decision from here in the office.

“In taking the matter up with the General Cigar Company’s executive office, New York City, they have decided to bring the matter to the attention of Mr. H. A. Jonas, General Cigar Co. Inc., 601 Third Street, San Francisco, Calif. So that Mr. Jonas could appoint someone to make a competitive inspection. No doubt within a very short time this inspection will be made.

“The type of panels desired by the General Cigar Company are panels that will sell cigars for them, such as panels at important street intersections where the panel will show to a cigar store or drug store, points of heavy circulation, pedestrian and otherwise, and various retail business sections where the panels can be seen by cigar purchasers.

“In industrial sections a panel reaching the factory gates is desirable and a high spot panel coming in on each important highway is also desirable.

(Testimony of Charles H. King)

“We give you this advice so that you will not confuse this campaign with a showing such as would apply to an automobile product, as very frequently we have sacrificed long highway shots for panels that face into retail outlets.

“Yours very truly,

“R. C. GRAHL.”

I received this letter of April 14, 1931, which is also signed by R. C. Grahl, reading as follows:

“Gentlemen:

“Recently we had some correspondence with you concerning posting for the General Cigar Company, Inc. in Oakland.

“We regret very much that it is necessary to advise you that the advertiser has decided to use the other plant.

“Yours very truly,

“R. C. GRAHL.”

After we had been advised that we had lost that advertisement, I wrote Mr. Grahl under date of April 15, 1931 as follows:

“April 15, 1931.

“Dear Mr. Grahl:

“Your letter of the 7th inst., relative to General Cigar Co., Inc., at hand.

“Mr. Solomon, District Sales Manager of the General Cigar Co. was in Oakland last week and checked our

1958

(Testimony of Charles H. King)

showing with the writer. He seemed very well pleased with our display but, of course, did not commit himself.

“We can give them the best display of posting in the East Bay and all of the locations on list submitted you, (with revisions outlined in our letter of April 3rd) are particularly suited for the selling of this product and meet the requirements specified in yours of the 7th inst.

“Trusting we may hear definitely from you at an early date, and thanking you for your consideration, we remain,

“Very truly yours,

“SPECIAL SITE SIGN CO.,

“By General Manager.”

Witness continuing: When I made the statement in there “We can give them the best display of posting in the East Bay” I guess I believed it was true. If the salesman does not have any enthusiasm or is not sold on his product he can't get very far. After I knew that the advertising had gone elsewhere, I wrote Mr. Grahl on May 18, 1931 as follows:

“May 18, 1931.

“Dear Mr. Grahl:

“We notice the posting has been done in Oakland for the General Cigar Co. on Foster and Kleiser's plant and we just want to let you know that there is not a panel in the entire display that you would have accepted for the Camel showing.

(Testimony of Charles H. King)

“Mr. Solomon, who checked our plant, seemed to think that parallel panels, even in groups of five and six, were better than our individual right angle panels.

“We trust that at some not far distant date we may have the pleasure of doing business with you again.

“Sincerely yours,

“SPECIAL SITE SIGN CO.,

“By GENERAL MANAGER.”

I suppose I believed the statements in that letter to be correct when I wrote it. I also wrote this letter of May 10, 1932 to Mr. M. F. Reddington, which reads as follows:

“Dear Mr. Reddington:

“We understand that Camel is giving up their National Radio program and we hope they will be back on the posters again soon. If so, we will be able to give them even a better showing than they had with us in 1930, and Mr. Grahl can vouch for the showing we gave Camel in Oakland during 1930.

“We sincerely trust we will have the pleasure of doing business with the Reddington Agency again before long.

“Very truly yours,

“SPECIAL SITE SIGN CO.,

By General Manager.”

I wrote this letter of July 19, 1933 to Mr. Edward J. Wiley, Jr. He was president of some eastern agency. The letter reads in part as follows:

1960

(Testimony of Charles H. King)

“Dear Mr. Wiley:

“We are just in receipt of your Air Mail letter of the July 19th, and we are more than pleased to note the many good contacts you have had with Mr. Hill of the William Esty Agency.

“In regard to the coverage for Oakland will say 36 panels (18 illuminated and 18 regular) would be required for Oakland alone to give a good showing. This is a half showing for Oakland.

“Previously, when we had the Camel posting, our contract covered Oakland only, and Foster & Kleiser Co. had the business in the small towns. Therefore, we have not fully built the small towns, but we have good locations under lease and, on thirty days notice, would build enough additional panels to give complete coverage in the small towns as listed below. . . .”

Witness continuing: When I said that we never carried any unbuilt locations, I understood that to mean entirely unbuilt. We have locations that are not entirely developed. There are unbuilt sites on some of our locations we have under lease. I have read my testimony to the effect that if we had been allowed to complete our showings or half showings or quarter showings, we would have been able to make our schedule of costs or prices and that we varied from that schedule price because we were driven to sell broken showings and that we have never got a full showing together or any fractional part thereof throughout the entire time in the past in which I have been in the advertising business and that I never offered a full quarter showing to an advertiser or a full showing or a full half

(Testimony of Charles H. King)

showing. I state that that testimony is exactly right and I have no explanation to offer in view of this correspondence which I have just read.

I reconcile the statements that we never offered a full half showing or a quarter showing or a full showing to an advertiser because those letters refer to what we called half showings and quarter showings, but not what an expert in the business probably would call a quarter, half or full showing. I was making an effort to create interest. I knew these sites were to be checked by the purchaser.

Q All right. Now, did you think that it would help you to get business to make representations as to what you could offer that, on a check, would show were not true? Was that your idea of the way you could get business?

THE COURT: I do not think that is a relevant or material part of his cross-examination; that is, I do not think it is so related to the subject that it need be pursued further. The witness has explained his position with respect to those letters, I think, sufficiently.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 201.

Witness continuing: That letter to Mr. Edward J. Wiley dated July 19, 1933 was in answer to this letter from Mr. Wiley which reads as follows:

1962

(Testimony of Charles H. King)

“July 19, 1933

“Mr. Charles H. King.

“I have just had a long talk with Mr. Hill of the William Esty Agency who handles the Camel account.

“We were discussing the coverage of Oakland. He did not seem sure that it was possible for 36 panels to cover Alameda, Berkeley, and San Leandro and other small towns, as Oakland has a population of 293,000 and the three other towns have a total population of 281,000.

“It may be possible that the information you supplied me with is not complete, but in my setup I have 18 regulars and 18 specials which includes the towns mentioned above.

“Please let me know if I am mistaken. If not, I have a map, which includes all of your towns, spotted to show the distribution of these 36 panels.

“You know Foster & Kleiser set up these towns as individual markets with a poster showing to cover each.

“We would appreciate your reply by return air-mail.

“Very truly yours,

“POSTER PLANT REPRESENTATIVES, INC.

“E. J. WILEY, JR.,
“President.”

(Testimony of Charles H. King)

On June 8, 1933 I again wrote Mr. Wiley as follows:

“June 8, 1933.

“Mr. Edward J. Wiley, Jr., President,

“Poster Plant Representatives, Inc.,

“500 Fifth Avenue,

“New York, N. Y.

“Dear Mr. Wiley:

“In 1930 the Independent plants on this Coast had the Camel posting, our contracts being from the R. J. Reynolds Tobacco Co., thru the M. F. Reddington Agency.

“In 1931 and 1932 Camel was not on the posters and in the meantime the Reddington Agency went out of business.

“As Camel is now using posting again, which is at present, on the opposition plant, we thought it best to call this to your attention as it may be possible for you to get the account.

“The Independents gave Camel a wonderful showing and we can now offer them a better showing, by far, than they have on the opposition plant.

“We had a special arrangement with them whereby we furnished only 25% illumination and 75% regular, the prices being \$36.00 and \$7.80 respectively. On account of the small percentage of illumination, the net price to us was very low and it may be possible to secure the business on a little more attractive basis, and still save them money.

“Very sincerely yours,

“SPECIAL SITE SIGN CO.,

“By

GENERAL MANAGER.”

1964

(Testimony of Charles H. King)

Witness continuing: I believed the statements in there to be true including the statement, "The Independents gave Camel a wonderful showing and we can now offer them a better showing, by far, than they have on the opposition plant." I again wrote Mr. Wiley under date of August 1, 1933 as follows:

"Dear Mr. Wiley:

"We are very pleased to have received a letter from the New York office of William Esty Company, dated July 26, 1933, copy of which letter we are enclosing herewith for your information. We will get in touch with Mr. Combs, Friday, and will advise you further as to the outcome.

"We recently painted some walls for Schlitz Malt, said walls being selected and contract let through their Pacific Coast representative, Mr. F. G. E. Lange. We notice that they are now using 24-sheet posting on the Foster & Kleiser Company plant. There is, undoubtedly, an agency handling this account but we do not know for sure who it is. Our last Standard advertising register, which is the April, 1930, copy, shows the agency to be Freeze-Vogel-Crawford, Inc., 441 Broadway, Milwaukee, Wisconsin. You may have later information than this and it has occurred to us that you might be able to contact the agency through your connections better than we can from here. We would be able to give them posting for a wonderful display of 10 by 50 highway bulletins throughout Central and Northern California, for anything else in which they may be interested in the outdoor field.

"Yours very truly,

"SPECIAL SITE SIGN COMPANY,

"By General Manager."

(Testimony of Charles H. King)

Witness continuing: At that time I thought the Foster & Kleiser Company were doing the posting for this advertiser. The letter was written with the idea of having our eastern representative contact the agency that was handling it to see if they could get the business for us. I have stated that we were unable to get the prices that we would otherwise have obtained for our posting and bulletins because of the interference of Foster & Kleiser Company. We have tried to get the prices that we thought they ought to be. I wrote this letter of August 16, 1933 to Mr. Wiley, which reads in part as follows:

“Dear Mr. Wiley:

“We were glad to receive your night letter this morning and have replied as per copy of telegram enclosed.

“As stated in our wire, we can deliver this Coca Cola showing on October 1st on 12 months' contract at standard prices of \$35 and \$7.80 but, on account of our requiring a lower percentage of illumination, by taking our showing Camel will save several thousands of dollars over the 12 months' period. This is the way it will work out.”

Witness continuing: That letter is wrong. It should not read “our requiring” but “your requiring”. The letter continues:

“This is an actual saving to the advertiser and not a reduction in service as we do not illuminate panels on secondary streets or where the traffic at night is not heavy

1966

(Testimony of Charles H. King)

enough to justify it. All of our panels are on main thoroughfares and arterial streets, and we only illuminate panels on primary locations.”

Witness continuing: I judge we had the Coca Cola account at the time I wrote this letter. I could not recall now what their showing was without looking at the records. They did not have a quarter showing or a half showing or a full showing. They had some kind of a broken showing. I don't remember just what kind. It was posting. The letter continues:

“Besides this great saving, by taking this showing on our plant, Camel will have the advantage of hand-picked panels, 100 per cent new type construction, and 65 per cent individual panels. All of our panels are built high enough above the ground to clear parked and passing automobiles.

“Spotted map of the Coca Cola showing was enclosed in our letter to Mr. Combs on August 11th. This was a traffic flow map and we also showed these de luxe locations on it, except No. 5 and No. 8 on the list enclosed, which can be added to the map if desired.

“The enclosed list of painted bulletin display shows locations desired, including Santa Ana, with prices. We can only deliver five in Oakland, instead of six requested, but these five reach the traffic in every part of the city, being at concentration points. These are available for immediate delivery. We have included location on Broad-

(Testimony of Charles H. King)

way at 20th Street, Oakland, which Mr. Combs was very anxious to get. We quoted it to him at \$125 per month on a 12-months' contract but, if taken in conjunction with the other bulletins on enclosed list, we will include it on the same basis at \$150 per month. This makes an average price of \$77.77 per month per bulletin which is very low for the splendid showing we are offering.

"Regarding the San Francisco territory will say that our suburban bulletin on Bay shore and Industrial Way, South San Francisco, shown as location No. 1 on our list dated August 11th to Mr. Combs, copy of which list we sent to you, is a wonderful buy at \$45 per month. It is an incoming reader to San Francisco with an extremely long head-on approach.

"We will send you photos of these de luxe bulletins in tomorrow's air mail.

"Wishing you success in closing this business, and assuring you of our desire to co-operate in every way possible, we remain

"Sincerely yours,

"SPECIAL SITE SIGN COMPANY

"By General Manager.

"P. S. While this is not official, we believe the same proposition on posting could be handled from the independent plants in Seattle, Portland, Spokane, Tacoma, Long Beach and San Diego. S. S. Co."

1968

(Testimony of Charles H. King)

Witness continuing: We did not get that contract. The letter offers a showing to our representative in the East. The prices in the letter were the ones that we were offering them at.

I sent this telegram of August 16, 1933 to Mr. Wiley:
"Mr. Edward J. Wiley, Jr.,

"Poster Plant Representatives, Inc.,
"500 Fifth Avenue,
"New York, New York.

"Can deliver Coca Cola showing October 1st on 12-months' contract consisting of 36 panels in Oakland, one-third illuminated and small towns as specified in your telegram total 60 panels prices 35 and seven eighty. Can deliver immediately 5 high spot units in Oakland, 2 Berkeley, 1 Alameda, 1 Santa Ana at average price \$78 monthly including 20th and Broadway location which Mr. Combs wanted especially. Air mail letter with list and photographs follows.

"SPECIAL SITE SIGN COMPANY."

Witness continuing: 36 panels is what we called a half showing. Foster & Kleiser called a half showing 36, but they were on the main arteries. Foster & Kleiser's half showing was not all on main arteries but it had to include them. We did not include all of the main arteries. I sent this letter of September 1, 1933 to Mr. Wiley:

(Testimony of Charles H. King)

“Dear Mr. Wiley:

“If you want us to check the Camel showing which they now have in Oakland and indicate the panels they now have on a map in comparison with the panels we will give them, we will be delighted to do so. It has just occurred to us that this may be of great assistance to you and will enable the agency to analyze and see the superiority of our showing. Please let us know if you would like this kind of a check for the William Esty agency.

“We are sure if they ask the Bureau to make a check of our plant, they will receive a biased report.

“Beside furnishing this comparative check of the two showings, we will be glad to make an actual check with the Camel cigarette representative in this territory if that could be arranged.

“We are having inquiries for our available half showing and we are being urged to state whether or not we can deliver this showing to another company. We have been holding off now for a few days in giving our answer, so we hope to hear from you very shortly as to whether or not Camel is going to close on the posting.

“Very sincerely yours,

“SPECIAL SITE SIGN COMPANY

“BY , General Manager.”

(Testimony of Charles H. King)

Witness continuing: My formula could be applied to a location that was not a key location. The first step in applying that formula is to take what the site would bring if developed and multiply that by 72 months and divide that by four and add one-third.

Q BY THE COURT: What did you say to do with four?

A You take the gross income from the site, and multiply it by 72.

Q That is the gross monthly income?

A Yes. Multiply that by 72 months.

Q Yes.

A And then divided that by 4, which would be 25 per cent of that amount, and then you add one-third of that.

THE COURT: I see that now.

Witness continuing: In applying the formula I don't take the actual income but the income which I assume we could get if properly developed, if we did not have unlawful interference. After we took that gross income a month and multiplied it by 72 and took 25 per cent of that, and added one-third to that 25 per cent on the assumption that a key location would help to sell our other locations. All locations helped to sell other locations.

Q That third of 25 per cent was an income that you never did get, wasn't it, under any theory?

A As I explained before, that was the value of the location to the plant as a whole. It was business that that board would bring to the plant, that location, and reduction of sales costs, as one sign sells other signs.

(Testimony of Charles H. King)

Witness continuing: It was on the theory that a key location helps to sell other signs that we can't otherwise dispose of. It is not only a key location, but any location. If you took a location on a secondary artery on any street that was not a main artery, I think it would be fair to add my third to that because different advertisers like different locations; the location on a secondary artery might be near some factory that someone might be trying to reach. If I said on my direct examination that I added that third to key locations because they helped to sell other locations that we could not otherwise dispose of, I did not go far enough. I did not state it all. They all helped to sell each other. I testified on cross-examination that by having a good site we increased the value of our other sites and that that is what is meant by valuation to the plant. I testified also that a key site would sweeten up an entire showing of postings and would sell showings on secondary arteries, which, without those key sites, would hardly be saleable at all. I want to modify that testimony. I want to say that the formula can be applied to any location. My testimony, "A key site will sweeten up an entire showing of postings and will sell showings on secondary arteries, which, without these key sites, would not hardly be saleable at all." is not hardly correct. If we had a location that was not very valuable or something that was not even a secondary artery, and we lost that location, I would still apply the same formula to it. We don't have sites that are worthless. In making that statement that a key location would sweeten up an entire showing and help sell sites that were hardly saleable, by hardly saleable I meant less saleable than key locations. In making this formula I did not take into consideration at all the

1972

(Testimony of Charles H. King)

rent that we would have to pay for those sites. The rent has nothing whatever to do with it. Assuming we had two separate and distinct locations from each of which we got \$100 a month, and that for one of those locations I paid \$50 a month rent and for the other I paid \$10 a month rent, the loss of those two locations would be equally damaging; that is, if the site would develop up to the same. It all depends on how it could be developed. If we had two sites from which I assumed I could get \$100 a month income each and for one of those sites I paid \$50 a month rent and for the other I paid \$10 a month rent, I think that the formula would apply equally to those two sites. The site on which I got a net over my rent of \$50 a month could be equally as valuable as the site on which we got \$90 a month net. That is taken care of by averages.

All that we put on the Segin property was a 4 by 6, what we call a target. I testified that the reason that we did not put anything more on was because of Foster & Kleiser's interference, which did not justify us in developing it. We got a very small income from a little target but you can't get anything from an individual poster. It would not pay to build one poster there unless we could complete at least a quarter showing. It is not my testimony that between the dates of September 3, 1925 and November 20, 1929 that we did not have even a quarter showing. We had what we called quarter showings but we were not on main thoroughfares.

The Segin property was on San Pablo Avenue. I have stated that that was one of the most important advertising streets in the town. We didn't put a 24-sheet on this

(Testimony of Charles H. King)

street because the showings we had were complete as we called them, but not as an expert would qualify. And we were endeavoring to build up an additional quarter showing. San Pablo was one of the very best streets in the city but the addition of a board there would not have helped out any quarter showing or any showing that we had. We were covered on San Pablo Avenue; I mean that for each of our quarter showings or half showings, we had a 24-sheet on San Pablo. We don't call those 4 by 6's targets. We call them painted boards. As an expert in the outdoor advertising business I never heard that that type of small board was very objectionable to the outdoor advertising business and brought it in disrepute. Foster & Kleiser say so but I never heard it from any other source. I would not be surprised to find out that it is one of the policies of the Bureau that they will never permit anyone to advertise on that size of board because the independent companies were the only ones that carried that kind of board. I realized that I could not get posters from the inception of the business in 1916. I believed that was true because of some combination that Foster & Kleiser had with the concerns that got out these posters. There were many discussions between Mr. LaFon and Mr. Stevens and myself about that. I can't recall the dates.

My partner Potter sold his half interest in the business to Foster & Kleiser. I would not say that on the books of the company my brother and I stood as sole owners of the stock with the legal right to vote it. The certificates were signed as trustees, but they were endorsed on the back and delivered to Foster & Kleiser Company. They

1974

(Testimony of Charles H. King)

were delivered to Mr. Lausen. We were holding no certificates. Our books showed me to be the owner of 24 shares personally and as the owner by trust of 12 shares, and my brother the same. The stock books and record books of the company did not say for whom we were trustees. I guess my brother and I have always voted the stock. We never consulted Foster & Kleiser or either Mr. Foster or Mr. Kleiser about voting it. We never were requested to do that. When we took the legal steps necessary to increase the amount of our stock, we did not consult either Mr. Kleiser or Mr. Foster about it. I did not think it was necessary because Foster & Kleiser had threatened to ruin our business, and they had come into our offices through this stock ownership and took off a list of our contracts and expirations and a list of our locations with expirations and used them against us. I thought that any means I could take to get rid of them was right. It is true that my brother and I voted all the stock which we held individually in our own names and as trustees for Foster & Kleiser, without notice to them, to increase the capital stock of our company. I think Foster & Kleiser purchased the stock in March, 1920, and the additional stock was issued in about December of the same year. I don't know how long after that it was that I informed Foster & Kleiser of this increase. I don't think it was more than a year but I can't recall. It was not the fact that I disclosed that to them that broke up the meetings between myself and Mr. Thompson. I believe the meetings started after that. I purchased all of the new stock that was issued, 24 shares. I believe I paid \$2400 par value. I knew that Foster & Kleiser had pur-

(Testimony of Charles H. King)

chased the half interest of Potter for \$7500. It is absolutely not a fact that the stock was purchased individually by Mr. George Kleiser and Mr. Foster. It was purchased by the Foster & Kleiser Company. When I went to see Mr. Lausen about it, no one went with me. When I first saw Mr. Lausen, I also saw Mr. Kleiser. Afterwards I took my brother, Joe King, with me. He was there at the time they made the purchase. Before that I believe I had made only one visit. It is not a fact that Mr. Kleiser told me in substance or effect that they were not interested especially in acquiring any interest in the company; that Mr. Potter was very anxious to get out of it; that he and I could not get along together; and that they were willing to buy Potter out and they would also buy me out and take over our sites and contracts; and that my brother said that that was not desirable; that they wanted me to have this business to run; and that he expressed the general feeling or fear that if they got Mr. Potter's interest that they would dominate the company and I would lose control of it. Nothing like that occurred. The idea was that Potter had gone over there and offered to sell his half interest and said that he could turn over the best accounts because he had sold them himself; and Lausen said they intended to buy and wanted to know if I would sell at the same price. I said, "No." It is not a fact that Mr. Kleiser asked me why I did not buy Potter and that either I or my brother said that we could not, that we did not have the money, and that Mr. Kleiser said that they would loan us the money and I said we didn't want to be obligated, and that they said, "All right, we will give you the money and you can hold it in trust to assure you that you

1976

(Testimony of Charles H. King)

are going to be in control and domination of this company." That is absolutely absurd. There was no such talk at all. It was afterward agreed, on Kleiser's proposal, that we should have the stock issued in trust and I delivered it to Mr. Lausen at the hotel. Nothing was said at that conversation about their business. Mr. Kleiser did not say that they were not interested in the business that we were doing or that we were catering to a class of trade that either could not or would not pay their prices nor did my brother say that they would have to come in for them to be interested; or that they could build them a secondary company to take care of the business that could not do business with them. There was no such conversation. It was probably two weeks after that that I delivered the stock to Mr. Lausen. At that conversation Mr. Lausen said something to this effect, as I handed him the stock, "Something has to be done about that location on the Hamlin Ranch. We are going to have that if it costs us \$10,000. I want to warn you, King, we are out to get you." I told him he would not get the Special Site Sign Company and then he enumerated on his fingers different companies that they had put out, to assure me that they would get me. I thought at the time that he was joking but it developed that he was not. Between that time and the time we bought the stock we found that out, and that was the reason for buying the additional stock. We saw we were tied up with a bad lot and they were going to put us out of business and something had to be done and done quickly, and we did it some time in December of that same year.

(Testimony of Charles H. King)

Mr. Kleiser made the suggestion to me that the weekly luncheons with Thompson some time after they had blocked us on what we call the Denevi site on Foothill Boulevard, and about the time they knocked us off the Ray Taylor site on Sloat Boulevard, and they were working on the Hamlin site and Cowell Lime & Cement and Arata. At that time I certainly got an idea that Mr. Lausen was not joking. Notwithstanding that, I then had my weekly meetings with Thompson for some months. The meetings were friendly. I had nothing against Mr. Thompson. It developed that Mr. Thompson wanted me to enter into some kind of conspiracy with Foster & Kleiser to go out into these small towns and crush independent plants before they could get a foothold. He told me that that was the purpose of the meetings, at the end of these meetings. Before that time, Mr. Thompson wanted me to get the stock back on the original basis so that they would own half and I would own half. I don't recall that there was a general discussion about the character of our advertising and boards and that sort of thing. Those are the high points of the discussion. The others did not amount to anything. It would be impossible to enumerate all the subject matters which were discussed. I don't recall anything outside of what I have testified to. I believe he wanted to know if I had been calling on Brunswick Tire Company. He said that they had been figuring on that contract and some independent was working on it. He wanted to know if it was me and I told him "No."

With reference to Plaintiff's Exhibit 197, without looking at the file, I recall that we had this site on San Pable

1978

(Testimony of Charles H. King)

Avenue and that it was built out by Foster & Kleiser. I remember I called Thompson on the phone about it and asked him if it was their policy to build out our boards and told him that we didn't build out theirs. He asked me why we didn't, and I asked him if he thought it was right and he said to go ahead and build them out, so I moved our board over in front of theirs and they took their board away. I don't remember now when that occurred. I could find that out from the records. I made no memorandum of that conversation. There might be some notation in the books somewhere but none that I recall now.

I remember that an order was made by this court requiring a bill of particulars as to certain sites. The time for supplying that was extended several times and we filed such a bill. More than a year after our original bill of particulars and a short time before the trial, we filed a supplemental bill and then we filed an amendment to our original bill here at the time of trial. I have been president of this company all along and I knew about all the locations that we had lost and all of these various acts that I have testified about. We didn't include all the locations that are listed in the supplemental bill and the amended bill in the original bill because we didn't have time. There was plenty and plenty we could have put in if we had had more time. I did not know about them at the time, I ran into them since. I said I knew about them every time that they were lost and knew that it was Foster & Kleiser that caused us to lose them, but a man can't carry that in his mind. But I carried this conversation which I had with Mr. Thompson in my mind without

(Testimony of Charles H. King)

a memorandum. I remember testifying on direct examination to conversations with employees and officers of Foster & Kleiser Company. I did not have a memorandum with respect to any of those conversations which I made at the time of the conversation by which I refreshed my memory, but there are contemporary facts and papers and documents that recall those conversations. They were rather high spots in our career.

I testified that I was the one who evolved this formula by which I valued the leaseholds. Mr. Westbrook and I worked together and both arrived at the same conclusions. We worked it out separately. Mr. Westbrook and I discussed it and then we separately arrived at about the same conclusion.

I received this telegram of September 10, 1929 from H. J. Mahin, which reads as follows:

“HAVE PROMINENT NATIONAL ADVERTISER INTERESTED IN USING YOUR PLANT FOR TWELVE MONTHS CONTRACT BEGINNING JANUARY INVOLVING SAME EXPENDITURE AS PAYING AT PRESENT FOR HALF SHOWING WITH YOUR COMPETITOR STOP ADVERTISER WANTS SMALLER PERCENTAGE ILLUMINATED AND MORE REGULAR AND WISHES TO MAKE SELECTION OF LOCATIONS TO FIT CITY AND PRODUCT STOP IMMEDIATE INSPECTION WOULD BE MADE IF YOU OFFER SUCH ARRANGEMENT WIRE PARTICULARS CARE WOODWARD HOTEL NEW YORK CITY I REPRESENT STEVENS OF SEATTLE AND

1980

(Testimony of Charles H. King)

OTHER INDEPENDENTS HERE THIS ORDER
WOULD GIVE YOU GREAT PRESTIGE AND BE
PRACTICALLY PERMANENT

“H. J. MAHIN.”

I do not remember now to what account that referred. I sent this telegram of September 11, 1929 to Mahin in reply. It reads as follows:

“WE ARE READY TO CHECK OUR PLANT
WITH THE REPRESENTATIVE OF YOUR NA-
TIONAL ADVERTISER AND CAN FURNISH
SERVICE AS OUTLINED IN YOUR TELEGRAM
OF SEPTEMBER TENTH.

“SPECIAL SITE SIGN CO.”

I remember receiving this letter dated December 16, 1929 from R. C. Grahl of the Reddington Company, which reads as follows:

“Dear Sir:

“Since having returned to New York I have several times gone over the showing selected on your plant for CAMEL CIGARETTES.

“I do not know whether or not you fully appreciate the responsibility taken in selecting your plant. The R. J. Reynolds Tobacco Company have been using another plant in your territory for over fifteen years and the recent decision is one of great concern.

“It is especially a responsibility on my part and I, therefore, felt it a personal matter to write you reminding

(Testimony of Charles H. King)

you that it is now your full duty to back up my judgment to the limit.

“The locations you deliver must be in accordance with the selections made. The showing must start on January 1st. The greatest possible care must be used in the handling of the contract. In fact, the service must be 100% in every respect and no stone left unturned to make the CAMEL a dominating one.

“Within forty-five days I expect to visit your plant for the sole purpose of inspecting the CAMEL display. It is certainly important to me personally and it should be of utmost importance to you, that a clean-cut meritorious report be made at that time. I am counting on you for full cooperation.

“With kindest personal regards, I am

“Sincerely yours,

“R. C. GRAHL.”

I think that this refers to the same matter which Mr. Grahl referred to in his telegram of September 10th because the Camel account was all we handled with Grahl. I wrote this letter of December 24, 1929 to Mr. Grahl, which reads as follows:

1982

(Testimony of Charles H. King)

“Mr. R. C. Grahl.

“In response to your letter of the 16th inst., will say we fully realize the responsibility you assumed in selecting our plant, and we are fully conscious of our obligation.

“We wish to assure you that the Camel showing in Oakland will be 100% O. K. in every respect.

“We are looking forward to your visit some time about the first of the year, and we are sure you will be more than pleased.

“The location which was to be built at Fourth Avenue and E. 18th St. has been secured and the site surpasses our fondest hopes.

“All the panels will be complete and ready for posting by December 28th.

“Wishing you the Compliments of the Season, we remain

“Very sincerely yours,

“SPECIAL SITE SIGN CO.,

“BY GENERAL MANAGER.”

We did complete our plans on that poster showing. I sent this letter of October 23, 1930 to Mr. Grahl, which reads as follows:

(Testimony of Charles H. King)

“Dear Mr. Grahl:

“Regarding the changes in the Camel display which you ordered as a result of your inspection under date of Oct. 4th, will say that Foster & Kleiser would not give us any of the changes on their plant which you desired. We are, therefore, giving you the substitutions you asked for on our plant, without charge, so you will have a double showing on these panels until Jan. 1st.

“We are securing the finest sites obtainable and will be in position on January 1st to give you Special Site panels to replace all of the panels now used on the Foster & Kleiser plant.

“With kindest personal regards, we remain

“Sincerely yours,

“SPECIAL SITE SIGN CO.,

“BY GENERAL MANAGER.”

I would like to explain that. When I contracted with Reddington to put out this Camel display, we didn't have sufficient boards so we cooperated with the Coast Advertising Company, another independent in Oakland. Then Foster & Kleiser bought them out and they were not willing to make the changes that the Reddington Company wanted and I had to make them myself. I did make them.

1984

(Testimony of Charles H. King)

On the same date I sent another letter to Mr. Grahl which reads as follows:

“Dear Mr. Grahl:

“We are preparing a showing of forty 24-sheet poster panels which will far surpass any tobacco display in this City, and which we hope to use for the Camel showing in 1931.

“This showing includes several downtown locations, which, naturally, increases our average space rental. Therefore, it will be necessary if you give us a contract for next year to have it on the basis of 14 illuminated and 26 regular. This figures 35% illumination, and gives us 14 illuminated instead of 10, as at present. We would very much like to have a continuation of this business on this basis.

“Can you let us know at this time if we are to be favored with the Camel contract for 1931?

“Thanking you for an early response, we remain,

“Sincerely yours,

“SPECIAL SITE SIGN CO.,

“BY General Manager.”

Witness continuing: Our regular fixed schedule of prices for our posting was based on a complete showing and we never completed what an agency or an advertising man would consider a showing; and we never got those prices. We made different prices according to the contingencies as they arose. If an advertiser agreed to

(Testimony of Charles H. King)

pay us a certain price for a showing, he could not be at all certain that some one else might not afterwards buy the same showing from us at either a higher or lower price. Under the conditions that we were working, we had to pick out for each advertiser the best of our plant and sell it to him. We made a price to each advertiser as conditions varied. The boards varied also. No two advertisers buy the same kind of a deal. Our schedule of prices is just a little under Foster & Kleiser's because our overhead was less. We did not have any undercover department and we didn't have any public relations department. We were not contacting other people's locations, and so on. I did not carry on the work of a public relations department by trying to keep in contact with the various city councils and city officials where we operated. I never found it necessary to contact those officials unless it was in the regular course of business, securing permits, and etc. I did not testify that I tried to keep in contact with all the various city officials and city councils and the ordinances in all the various cities where we operated. It may be necessary for a person who intends to conduct an outdoor advertising business to keep in touch with the general civic bodies and civic clubs to continually combat the feeling against outdoor advertising, but I can't see the necessity of contacting the council and officials for that purpose. It is a fact that the outdoor advertising business always has had to combat adverse public sentiment. I don't think that that sentiment has been growing gradually less during the years. I think it is probably worse than it ever was.

1986

(Testimony of Charles H. King)

Our prices were not made less than Foster & Kleiser's with the desire to secure business by underbidding them. Our costs of operation were less. I wrote this letter of June 4, 1929 to Mr. Westbrook, which reads as follows:

“June 4, 1929.

“Mr. D. G. Westbrook,

“Russ Building,

“Dear Mr. Westbrook:

We are enclosing herewith list showing four paint bulletins which we have available in Oakland, at prices as shown. List also shows 23 four-sheet poster boards, the price for which is as per enclosed rate card. The enclosed marked map shows the locations of these poster boards.

“You will observe, by studying our rate card, that our commercial rates and amusement rates are both below the F. & K. prices. Also, all of our posters are standard construction.

“Our photographer disappointed us, but we will have pictures for you in a day or two.

“Wishing you every success, we remain

“Yours very truly,

“SPECIAL SITE SIGN CO.,

“BY GENERAL MANAGER.”

Witness continuing: We pursued the same policy as Foster & Kleiser as announced in their bulletin by Mr. Thompson to the effect that wherever any advertising was seen being done by other people, it should be reported

(Testimony of Charles H. King)

so that Foster & Kleiser could contact the advertiser. We contacted everybody we thought was interested. It didn't matter whether they were on the Foster & Kleiser boards or not; they were in the field for regular advertising.

I received this letter of June 10, 1929 from Mr. Westbrook, which reads as follows:

“Attention Mr. King.

“Gentlemen:

“Confirming telephone conversation, we have an inquiry from the Shell Oil Company through the J. Walter Thompson Agency for 27 bulletins located in the following cities: San Diego, Los Angeles, Oakland, San Francisco, Portland, Tacoma, Seattle and Spokane.

“They are interested in four bulletins in Oakland. If you have more than four bulletins, you might send me a description of five or six. Please give me a description for each one; include about a paragraph of sales talk to go along with it and also a photograph, if possible. Mark each photograph so we will know which bulletin it covers. It it is possible for you to contact a Shell representative who is in high enough position so that he can make a recommendation for our service in such a way that it will reach the head office or the Thompson Agency, it would go a long ways toward making this sale.

“It would be wonderful if we could break in on this account, so I am writing to all of the other companies

1988

(Testimony of Charles H. King)

asking them to cooperate so as to help push this thing through.

“Thanking you, I am,

“Yours very truly,

“D. G. Westbrook Co.

“By D. G. Westbrook.”

Witness continuing: I don't recall whether I personally made any special effort to take that account away from Foster & Kleiser. I also received this letter of August 15, 1929 from Mr. Westbrook:

“Gentlemen:

“During the past week we made our first contract on the Eastern Outfitting Company who have a large furniture store in San Francisco and also have large stores in the other big cities on the coast. They own the Columbia Outfitting Company. Prior to our call on the Eastern Outfitting Company, the Foster & Kleiser Company have been working with them for a long time, trying to get them to approve a comprehensive outdoor advertising schedule which would be standardized for all of their branches. They have at last succeeded in interesting the management in San Francisco, to the point that they have been permitted to solicit all of the outside city branches direct.

“We suggest that immediately upon receipt of this letter you have your sales representative call upon the Eastern Outfitting Company or the Columbia Outfitting Company, as the case may be. We have an especially good chance

(Testimony of Charles H. King)

to sell them in Spokane and Foster & Kleiser Company has no plant there. These people should be contacted in Oakland, Seattle, Portland, Tacoma and Los Angeles. I am not sure whether they have a store in San Diego but if they do have it will be well for the Robert Cordtz Company to contact them. This letter is being written to all the members of our association.

“Very truly yours,

“D. G. Westbrook Company,
“By D. G. Westbrook.”

I don't recall whether we ever made any effort to obtain that account but I guess our salesmen made an effort to contact them. I don't remember what we did. I don't recall particularly receiving this letter dated November 22, 1929 on the letterhead of D. G. Westbrook Company. The second page of the letter is not in my file and has apparently been lost. The first page reads as follows:

“Gentlemen:

“As you know, we have been contacting McCann Agency for a long time and we have just now received a call from them to furnish them with a proposal outlining the service which we can render the entire length of the Coast.

“Attached is a list of the locations which they are now using together with the prices they are paying. Needless to say, this is confidential information and I do not want

1990

(Testimony of Charles H. King)

anyone except yourself and Mrs. Montgomery to know that you have it.

“I have written to all the other plant owners to furnish me with their data within the next three days. You will not need to do anything now as I will come over to your office and we will work out your part of the proposal after I have received the data from the others. It might be well for you to refer to the list and get a clear idea of what Borden is using and paying.

“When I get all of the material together I am going to prepare a proposal that will knock the spots off anything our competitor turns into the agency. There is no limit to what we will do to get some business. We surely feel good the way things are now going. I will bet anyone money that within the next 60 days we will secure some account that will knock,”

Witness continuing: Mr. Westbrook was our agent at that time and he was not an advertising agency. He was an independent solicitor. At that time I considered him an expert in the business. He was simply soliciting business from advertisers for myself and other so-called independent companies.

It was thereupon stipulated that the following letter from D. G. Westbrook to C. E. Stevens Company dated March 10, 1930 might be read into the record. Said letter is in words and figures as follows:

(Testimony of Charles H. King)

“March 10, 1930.

“C. E. Stevens Company,
“Post Office Box 463,
“Seattle, Washington.

Attention Mr. Stevens.

“Gentlemen:

“The substance of this letter has already been discussed with Messrs. Cordtz, LaFon and King during the past ten days. It does not seem to me that we are getting a fair break from the agencies. I realize that in a number of cases the agency, out of fairness to its client, places the business with Foster & Kleiser Company, but we have had a number of cases during the past six months where we have actually sold the advertiser out posting and painted bulletin plants, but before the business actually reached us it has been diverted by the agency.

“Most of the cases referred to apply particularly to the C. E. Stevens and LaFon plants, which are better equipped to give service in posting than are the other independent companies. I might add there that this does not apply to the U. S. Sign Company of Spokane, which, due to the fact that they have no competition with Foster & Kleiser, is receiving a fair share of the agency and Bureau business.

“The agencies have met us with fair words, but so far very little business has resulted. As far as San Francisco is concerned we should have had posting from Associated, Shell Oil, Langendorf Bakery, and all of the Jansen posting in Los Angeles, instead of one month.

(Testimony of Charles H. King)

“In most cases it seems to me the business has been deliberately placed with our competitor, and I am not convinced that we had a fair break.

“In discussing this matter with the gentlemen referred to I suggested that a committee of one be appointed by the independent companies to call upon the president and secretary of the Pacific Coast Advertising Agency Association, and quietly and carefully point out to them the facts regarding the agency situation so that the officers of the Association may know by inference that we have reached the point where action must result quickly.

“As I believe the President of the Association has his office in Portland, I suggest that this being true you call upon him there. It would seem a simple matter to point out to him that the independent companies have an investment in their plants, and if these plants are not sold through cooperation with the agencies it is obvious that there will be only one thing left to do, and that is to go to the advertisers direct with prices which will get the business.

“Messrs. LaFon, Cordtz and King endorse this plan. I am sending a copy of this letter to each of them and also to Mr. Lorraine. If this plan seems good to follow, you may use the names of all the other independents mentioned, although I would suggest leaving out Mr. Lorraine, as with the business he is receiving through the Bureau he will probably be better off to continue with the Bureau. As I have not discussed the matter with Mr. Lorraine if he cares to write you his opinion upon receipt of his copy of this letter he can do so.

(Testimony of Charles H. King)

“While our plants are probably pretty well sold, Mr. LaFon has a lot of open space in Los Angeles. He has a good plant and I know that it can be sold direct.

“I do not wish to seem officious, but I have felt that part of my job is to get the independents together on matters of this kind, and I do consider it highly important that the agencies officially be notified of the way we regard this matter. It may be possible to get the President of the Association to send out a circular letter to all of their members, calling their attention to the independent plants and mildly pointing out that it would be well for them to place more business with us.

“Speaking plainly, it looks like our chief competitors have just as close a working arrangement with the Bureau and agencies as ever, and that we are now being two-timed by them. I am enclosing names and addresses of the Associations officers. Will you please write to me how you feel about this matter.

“Very truly yours,

“D. G. Westbrook.”

Witness continuing: I went to advertisers directly and tried to sell our business directly to them. I realized that that would almost certainly prevent us from getting any business from the agencies but we had to get business from some place. The agencies would not give it to us, they placed it through the Bureau on Foster & Kleiser's plants. I know that lately the agencies handle most of the large national accounts and that it goes to Foster & Kleiser's plants almost exclusively. The agencies make

1994

(Testimony of Charles H. King)

their money purely from commissions paid them. We paid them commissions. I knew if we went directly to the advertiser and solicited business directly, we would almost certainly alienate the agencies but they were alienated anyway. That was our reason for it.

I received this copy of the letter written by Mr. Westbrook to the Custo Corporation. That was a corporation that put out some patent food product. They were not an agency. As near as I can recall, at the time this letter was written, there was no agency handling their account. I am not sure of it. The letter reads as follows:

“Attention Mr. Rowan.

“Gentlemen:

“You have requested that we submit prices upon our 3-sheets, in Oakland, Berkeley, Alameda, San Leandro and San Francisco.

“While we have a number of 3-sheet structures erected which are not sold at the present time, our system of operating this classification of outdoor advertising is to build them specially for the account sold. This gives the advertiser the advantage of having locations which are ideally situated to best sell his advertising needs. It is a tailor-made method of handling.

“Where we build especially for you, we quote you prices on a one-year contract basis as follows:

“3-sheets with monthly change of copy \$3.00 per month each

(Testimony of Charles H. King)

"3-sheets with copy changed each six weeks \$2.85 per month each.

"3-sheets with copy changed each two months \$2.70 per month each.

"You understand, Mr. Rowan, that we will deliver at the above price, standard structures only. We do not solicit or deliver any advertising on a sniping basis. In the event that any poster which we place becomes torn or defaced, we replace it free of charge, providing you furnish us with the extra posters for the purpose.

"Advertising your product on this medium will bring you good returns, providing that it is placed upon well kept structures and services rendered in a workmanlike manner. This we guarantee to do.

"The companies which we represent as indicated by this letterhead can deliver all classifications of outdoor advertising from Spokane and Seattle to San Diego. We prorate any business we receive according to the plant owner's territory indicated above.

"We have in San Francisco and Oakland, contiguous territory, many fine painted bulletin locations. We have in the northern half of the state 10 by 50 standard highway bulletins built which we can offer you at \$19 per month on a one-year's contract. We also have a number of 5 by 12 miniature De Luxe now erected upon a main highway in the northern part of the state between Bakersfield and the Oregon line upon which we can quote you prices of \$8 per month each on a one-year contract.

"If later you should be interested in 24-sheet posting, we have very fine plants in Spokane, Seattle, Tacoma.

1996

(Testimony of Charles H. King)

Portland, Oakland, Los Angeles, Santa Ana and Long Beach and San Diego. Over 50 per cent of the posters in these plants are individual. We have practically no parallel panels and in most cases they are built high enough above the ground so as not to be blocked by parked or passing automobiles.

“To give you an idea of the type of accounts which we are serving with this type of outdoor advertising, we wish to point out that we have recently sold the Reynolds Tobacco Company, Associated Oil Company, Philadelphia Storage Battery Company, Frigidaire, Buick, Pontiac, Oakland, Jantzen Knitting Mills and a number of other accounts of equal importance. All of the accounts listed now have posting on our plants.

“If in quoting you prices, terms and conditions on our advertising, some of the details are not just as you want them, please let us know as we do not wish to be considered arbitrary. If you have any particular ideas you would like carried out in the way of placement, copy, distribution or anything else we shall be glad to figure with you at any time.

“Thanking you for the opportunity of presenting this data, we are,

“Very truly yours,

“D. G. WESTBROOK COMPANY.”

(Testimony of Charles H. King)

I approved of those prices that were quoted.

If we had a site on which we intended to erect either a de luxe bulletin or a poster panel, which would be a key location, I would consider it advisable to keep that site unimpaired. If there were a number of vacant lots contiguous to that site on which some other advertiser could build a structure and block out the view, I would consider it a very good business move if I could afford to get those other adjoining lots under lease so that they could not interfere with our location. In some instances we did have what we called protection leases, that is, leases to protect the view to our sign, just as we had on Piedmonte, protecting the view to our sign on the Pastoreno site. On that site I should think we had about a 50 foot frontage covered by a protection lease. The amount of frontage necessary for protection would depend entirely upon the location, situation and view of the site that we were building our structure on.

Aside from the question of competition, the value of advertising sites changes from time to time with changing traffic conditions. Not infrequently it happens that a site that is desirable becomes unimportant through some change of traffic conditions, as where highways are moved. It is also true, especially in cities like Oakland and Los Angeles, that traffic is sometimes diverted by a cut-off where new streets are opened up. Leaving out the question of competitive conditions, conditions in the tight and extra tight districts change only very gradually. During the development of the automobile, the value of the tight district or first traffic area has changed very materially.

(Testimony of Charles H. King)

We now refer to billboards as advertising structures as Foster & Kleiser do. The way we build them, they are firmly built with practically no danger of falling over and they are rather attractive. I understand that in the early days of the business some of the most valuable sites were along railroad tracks. There was very little railroad business in my time. It is true that, with the development of the automobile, outlying streets and roads that were of no advertising value at all a decade ago have now become the most valuable.

BY MR. CLARK:

I remember writing this letter, Plaintiff's Exhibit 137-F, to Mrs. O'Neil. She said that the transfer had been made and when we asked where that could be seen, she had her attorney write. I recall that the actual transfer had not been made at the time we wrote that letter but was made subsequent to that. It is my impression now that the deed from Mrs. O'Neil to her daughters was dated subsequent to December 16, 1924. I got that impression from the letters in the file. I don't seem to be able to locate the letter here, but I recall the discrepancy in the time of the transfer. It may be that while the deed was made prior to December 16, 1924, it was not recorded until January, 1925, and I complained because there had been no recordation of it. I don't recall whether we received a letter from Mrs. O'Neil in response to the letter, Plaintiff's Exhibit 137-F. I believe we did receive a letter in response in which Mrs. O'Neil told me of the offense that that letter had given her because we had questioned her good faith. I don't know where that letter is; I thought it was there.

(Testimony of Charles H. King)

REDIRECT EXAMINATION

BY MR. GLENSOR:

I wrote a letter to the Misses O'Neil, Plaintiff's Exhibit 127-G, dated October 6, 1924, calling their attention to the fact that the sale of the premises must be evidenced by the passing of the deed and inquiring where the records of the transfer could be found. Plaintiff's Exhibit 137-H, a letter from Messrs. Snook, Snook & Chase, dated March 14, 1927, states that Mrs. O'Neil sold the property to her daughters by deed dated November 10, 1924. That is the discrepancy in dates that I had in mind.

Our corporation was the incorporation of King & Ashcraft, a pre-existing partnership. At the time we incorporated, we took up the assets of the copartnership. Since that time we put in \$2,400, at the time the new issue of stock was sold in December, 1920. We originally issued 24 shares of capital stock each at par, and on top of that there has been \$2,400 additional capital invested in the business. The other money in the business, if any, over and above that original capital investment, came from the earnings of the corporation. In keeping our books, we have made no effort to distinguish between capital investment and expense. As we constructed new plants we just charged it up to expense.

With reference to the stock owned by Foster & Kleiser, I levied an assessment and they turned in their stock in lieu of payment of the assessment. They had half of the stock. There were four directors. Before Foster & Kleiser appointed the two directors that they wanted to put in, I bought 24 shares additional which gave us two-thirds ownership.

(Testimony of Charles H. King)

On our balance sheet we carry real estate at 32nd and Louise Street at \$7,323.78, as of January 31, 1934. That represents the purchase price of the property. We purchased it at different times and have had it a good many years. The reasonable value of that real estate now is \$30,000.

We never received a contract for advertising through or from the National Outdoor Advertising Bureau. We cleared the contract with the Pet Milk account which we ourselves had secured through the Bureau some time in 1929. That was sold by Mr. Westbrook and was sold direct to the advertiser. Nothing was said in regard to any agency, and after the deal was closed, it seemed that there was an agency on the account and it was then routed through the Bureau and 16-2/3 per cent commission deducted from it and paid to the Bureau. We never got any other business from the Bureau.

I referred to the boards on the Hamlin site as a mess. We did not build those boards. They were on there when we got the site. We were not selling them at the value to which the site should have been built up. I was selling it for what we could get for it. We intended to develop the site and remove these old boards. The Hamlin site was instrumental in securing at least two contracts for us. The representative of the Champion Spark Plug Company came to the Coast here. He stated that he had interviewed Foster & Kleiser and that he was not satisfied with the deal he could get from them, and that he got in his machine and drove out on the highway and saw our head-boards on the Hamlin Ranch and he came over to our office in Oakland and closed the deal with us to

(Testimony of Charles H. King)

handle the account. The Dreadnaught Tire account was handled through Dunham, Corrigan & Hayden, and the party who handled the Dreadnaught account got in touch with me and said he had seen the location on the Hamlin Ranch and wanted to know if we could handle a contract over the northern part of the state for them. I signed a contract with him.

We never did any sniping. In computing the profit of 25 per cent which I estimate we would derive in the operation of our business without interference, I contemplated that there would be times when our signs would be vacant. We do not have our plants full 100 per cent of the time nor does any other outdoor advertiser. Our 20 per cent overhead takes care of vacancies on our plant. The vacant boards are part of our overhead expense. Advertisers' contracts are cancelled from time to time and do not always run their full term. That does not particularly affect the value or use of a location. It is sold to another advertiser. I was unable to state on cross examination when we lost our board on the Swain location. I had in mind the fact that Foster & Kleiser's office record card shows that our board was removed March 18, 1931. On the Giurlami lease dated May 13, 1925, I made a notation, "Lost at expiration May 1, 1930". That should have been May 13, 1930. That indicated the loss of the lease, not the loss of the sign. I recall that our sign remained on the property until the

(Testimony of Charles H. King)

suspension of the Giurlami contract. Giurlami was the advertiser. That was in the latter part of 1930, and the sign was not lost until March, 1931.

We once had a lease and a sign on the property of Swain.

We had an advertiser on the sign. Without regard to what date the location was lost, we lost the location and the sign and the advertiser. That was on the lower Sacramento Road.

I did not sign any quitclaims similar to those attached to the letter, Plaintiff's Exhibit 131-G, which is dated June 7, 1930. I received this letter, dated June 16, 1930, from Santo Banchemo.

MR. CLARK: I am going to object to offering that in evidence on the ground that it is not part of the record. That letter should have been introduced as a part of your case in chief, if you wanted it.

THE COURT: Let it be admitted.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 202.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 131-J in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 131-J.]

4709 Shafter Avenue,
Oakland, California,
June 16, 1930.

Special Sign Company,
3225 Louise St.,
Oakland, Calif.

Gentlemen:

In as much as you have terminated the contract for the advertising privilege on my property at 60th and Telegraph Avenue, I would like a complete release from you, in order that I may be able to lease the property for any purpose to some one else.

Please send me such a release as soon as possible.

Yours very truly,

Santo Banchemo

Santo Banchemo

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 131-J Filed 1/9 1935 R. S. Zimmerman.
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Witness continuing: We did not send Banchemo a release when we got this letter. Banchemo then called on me at the office and he had a release typewritten and he asked me to sign it. That is a copy of it.

I received this letter dated October 10, 1929 from the East Bay Title Company.

MR. CLARK: I object to the introduction of that letter in evidence on the ground that it is irrelevant and not proper redirect examination.

THE COURT: I will confess that I am not clear on it myself. Go ahead and read it.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 203.

The letter referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 133-K in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 133-K.]

[Letterhead of East Bay Title Insurance Company]

[Crest]

EAST BAY TITLE INSURANCE
COMPANY

1430 Franklin Street
Oakland, California

October 10th, 1929

Special Site Sign Company
3225 Louise
Oakland, California

Gentlemen:

We are writing on behalf of Dr. William P. Milliken, the owner of premises known as #1318 East 12th Street, Oakland.

We have made repeated requests by phone to have you remove the sign from the above property, which sign is at present improperly placed upon the premises. Your rights under a former purported lease have expired. Your failure to remove the said sign therefore compels us to demand that this sign be removed within three days, or we will have it removed and all expenses incurred together with damages will be demanded of your company.

Very truly yours,

EAST BAY TITLE INSURANCE CO.

By Wm. J. Kane

WJK:hb

Recd 10 AM 10/12/29

2006

(Testimony of Charles H. King)

(over)

[On Envelope Attached.]

East Bay Title Insurance Co.

1430 Franklin Street

Oakland, California

Registered No. 62311

[Postmark] Oakland (16th St. Sta) Calif. Oct 11-1929

Special Site Sign Company

3225 Louise

Oakland, California

Return Receipt Requested

Fee Paid

No. 5673-C. Special Site Sign vs. Foster & Kleiser
Plf Exhibit No. 133-K Filed 1/9 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Thursday, January 10, 1935

Witness continuing: If I testified on cross examination that we had increased the capitalization of the company, I made a mistake. When we issued the additional 24 shares of stock we just sold treasury stock. We applied to the Commissioner of Corporations for a permit to sell 24 additional shares to stockholders. Those were the proceedings I had in mind when I stated that we had increased the capitalization. This is the permit issued by the Commissioner of Corporations which I had in mind. It reads as follows:

(Testimony of Charles H. King)

“STATE CORPORATION DEPARTMENT
OF THE
STATE OF CALIFORNIA

“IN THE MATTER OF THE)
APPLICATION OF SPECIAL)
SITE SIGN CO.) SUPPLEMENTAL
) PERMIT
For a certificate authorizing it to)
sell its securities.)

Herman Weinberger,
Attorney for Applicant.

“Pursuant to its application, SPECIAL SITE SIGN CO., a California corporation, is permitted to sell and issue 24 shares of its capital stock to its present stockholders of record at par for cash, lawful money of the United States, for the uses and purposes recited in said application, so as to net the applicant the full amount of the selling price thereof.

“THE ISSUANCE OF THIS CERTIFICATE IS PERMISSIVE ONLY AND DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF SAID SECURITIES.

Dated: San Francisco, California, December 6, 1920.

“E C BELLOWS
Commissioner of Corporations
BY A. G. FICKEISEN
Chief Deputy.”

(Testimony of Charles H. King)

Witness continuing: I have in mind the distinction between increasing the capitalization of a corporation and securing a permit to issue stock that is already authorized by its articles of incorporation. The certificates which I delivered to Mr. Lausen at the Palace Hotel were issued to my brother and myself as trustees. We endorsed them on the back and delivered them to Mr. Lausen. The stock stood in that condition until 1930. The brother and I wrote a joint letter to terminate our trusteeship. This is a copy of the letter which we wrote. The original was mailed to Foster & Kleiser.

The letter referred to by the witness was thereupon marked Plaintiff's Exhibit 202 for Identification.

Mr. Glensor thereupon offered in evidence a letter dated January 20, 1932, addressed to Special Site Sign Company, signed by Herbert W. Clark.

MR. CLARK: Yes. I think that is wholly immaterial and hasn't any place here in redirect at all. I will admit that I wrote the letter but it is wholly immaterial.

THE COURT: Let it be admitted.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 204.

Said letter was thereupon received in evidence and marked Plaintiff's Exhibit 203 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 203.]

Law Offices of
MORRISON, HOHFELD, FOERSTER,
SHUMAN & CLARK

A. F. Morrison (1881-1921)		C. Coolidge Kreis
Herbert W. Clark	Crocker	W. T. Fitzgerald
Roland C. Foerster	Building	Wm. L. Holloway
Edward Hohfeld		Francis C. Hutchens
J. F. Shuman	San Francisco	Garrett H. Elmore
Leon F. de Fremery		Noel A. Troy
Forrest A. Cobb		Emory L. Morris
		J. Hart Clinton
		Boice Gross

January 20, 1932.

Special Site Sign Company,
3225 Louise Street,
Oakland, California.

Gentlemen:

Herewith find certificates numbered 10 and 11, the first in the name of Charles H. King, Jr., Trustee, endorsed by him, and the second in the name of J. H. King, Trustee, endorsed by him, evidencing the ownership of twenty-four (24) shares of stock of Special Site Sign Co., each certificate covering twelve (12) shares.

These certificates are now surrendered to you to be transferred on the books of the company as follows:
Issue a certificate for twelve (12) shares to George W.

(Testimony of Charles H. King)

Kleiser, and a certificate for twelve (12) shares to Walter F. Foster, and deliver both certificates to the bearer of this letter, who will give you a receipt therefor.

This is being done in accordance with the telephone conversation had yesterday between the writer of this letter and Mr. Charles King.

Yours very truly,

MORRISON, HOHFELD, FOERSTER,
SHUMAN & CLARK,

By Herbert W. Clark

HWC:RF

Enc.

No. 5673-C. Special Site vs. Foerster & Kleiser Plf
Exhibit No. 203 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: The stock was finally surrendered to the company. Herman Weinberger, our attorney, handled the *the* transaction for us.

It was thereupon stipulated that a letter dated October 3, 1932, signed by Roland C. Foerster, was signed by said Foerster, a partner of Mr. Clark's. Said letter was thereupon received in evidence and marked Plaintiff's Exhibit 204 in evidence, and is in words and figures as follows:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 204.]

Law Offices of

MORRISON, HOHFELD, FOERSTER,
SHUMAN & CLARK

A. F. Morrison		C. Coolidge Kreis
(1881-1921)		W. T. Fitzgerald
Herbert W. Clark		Wm. L. Holloway
Roland C. Foerster	Crocker	Francis C. Hutchens
Edward Hohfeld	Building	Garrett H. Elmore
J. F. Shuman		Noel A. Troy
Leon F. de Fremery	San Francisco	Emory L. Morris
Forrest A. Cobb		J. Hart Clinton
		Boice Gross

October 3, 1932.

Herman Weinberger, Esq.,
Merchants Exchange Building,
San Francisco, California.

Dear Herman:

I am sending you herewith the following certificates of stock of Special Site Sign Company:

Cert. No. 26, standing in the name of
George W. Kleiser, for 12 shares;

Cert. No 27, standing in the name of
Walter F. Foster, for 12 shares.

(Testimony of Charles H. King)

These certificates have been endorsed in blank by the record holders thereof.

These certificates are delivered to you for the purpose of surrendering them to Special Site Sign Company for surrender, cancellation and return to the Treasury of that company with the same effect as if the same had been purchased by the company at sale for delinquent assessment.

I am authorized on behalf of George W. Kleiser and Walter F. Foster to assure you that they relinquish all right, title and interest in the stock upon the surrender and cancellation thereof, as aforesaid, and that they raise no question as to the propriety of the assessment or the failure to have any sale for the delinquency thereof.

Kindly obtain an acknowledgment of the delivery of these certificates from the company direct to Messrs. George W. Kleiser and Walter F. Foster, in order that their records as to the disposition of the stock may be complete.

Very truly yours,

RCF:F

Roland C Foerster

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 204 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

(Witness continuing:)

Between the years 1920 and 1929 the prices obtainable for outdoor advertising increased very considerably. With reference to the Bruecker location where we painted out a wall and moved our sign to a roof, the sale price of the roof was \$75 a month and the price of the wall had been \$22.50 a month. The wall was a very much better showing. There was less sales resistance, it was an eye-level location. The roof was high in the air and naturally had greater sales resistance. The reason the roof sign brought more money was that it was illuminated and the wall had not been illuminated up to that time. The roof was an all-steel sign and there was a difference in the investment of around \$1,800. We have had a very hard time selling the roof location. It has been vacant for two years.

With reference to the Bertoli garage on Telegraph Avenue, I did not induce Mr. Bertoli to build that garage. He was going to do that anyway and he made that a part of the consideration upon which he would give us the site.

With reference to the Snow property on the margin of Temescal Creek, I testified that we lost the sign in 1925. On this sheet of the contract register, showing the Margetz contract, there are a number of locations. Each one of those represents a sign that was used to fill that contract. In the body of the page it shows 4701 Grove. That is the Snow property. I find that the location has been crossed off the register and that it also shows in the lefthand margin that the location had not been painted subsequent to the original painting on March 13, 1925.

(Testimony of Charles H. King)

I did not notice that at the time I testified that we repainted the sign in 1927.

Mr. Carrel, Donaldson Lithographing Company's representative, never called on me. If there was any investigation made of my plant I never heard of it. The posters provided for in these contracts between Donaldson Lithographing Company and Ashby Furniture Company, being part of Defendants' Exhibit UUU, did not go on our plant. I secured these contracts from the Ashby Furniture Company. I made a trip out to the Ashby Furniture Company to determine whether or not the statements made in the Donaldson letters that their service was sold posted on the poster boards as a completed service was true or not.

Q What is the fact?

MR. CLARK: Objected to as incompetent, because it is hearsay.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 205.

A I found the facts were that they merely sold the posters.

Witness continuing: I never got any posters from the Donaldson service.

Foster & Kleiser Company's office bulletin No. 22, dated August 26, 1921, was thereupon received in evidence and marked Plaintiff's Exhibit 207 in evidence, and is in words and figures as follows, to wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 207.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 22

San Francisco, Cal.,
August 26, 1921

TO ALL BRANCHES:

Subject: Commissions to Donaldson Lithographing
Company

The following is copy of our letter of August 25th 1921, to Mr. A. L. Lewis, Pacific Coast Representative, Donaldson's Lithographing Co., regarding the change in commissions, which change becomes effective immediately.

"Mr. Foster has referred to me your memorandum addressed to him under date of August 22nd in reference to commissions to be allowed Donaldson's Lithographing Co., by Foster and Kleiser Company and has requested that we communicate with you as follows:

1. We will allow the Donaldson's Lithographing Co. a commission of 16-2/3% on all national orders sent to us by Donaldson's Lithographing Co. provided such orders are in accordance with our standard specifications and terms.

2. We will allow the Donaldson Lithographing Co. a commission of 10% on all space sold locally in conjunc-

(Testimony of Charles H. King)

tion with you for Donaldson's service posters in any of our cities or towns in other than standard set showings—this 10% to be credited monthly on the amount of our monthly billing to the customer less the cost of the paper.

3. We will allow the Donaldson Lithographing Co. a commission of 10% on all space sold locally in conjunction with you for Donaldson's posters in any of our cities or towns in standard set showings. The 10% to be credited monthly on the amount of our monthly billing to the customer less the cost of the paper.

Mr. Foster mentioned the fact that you would in all probability be relieved of covering the States of Montana and Idaho. As you know, we have acquired a great many new cities and towns in the States of California, Oregon and Washington. We feel that by confining your sales efforts to these three States you will find that you will have plenty to do in order to cover them properly.—”

[Stamped on face of sheet]: REFERS TO BULLETIN DATED No. 42 2-18-22

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 207 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 42, dated February 18, 1922, was thereupon received in evidence and marked Plaintiff's Exhibit 208 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 208.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 42

San Francisco, Cal.,
February 18, 1922

TO ALL BRANCHES:

Subject: Donaldson Service Posters

Mr. Lewis, the Pacific Coast representative of the Donaldson Litho. Co. has advised us that the Donaldson Litho. Co. will send to each of our branches samples consisting of miniatures of all of their service posters. We have assured Mr. Lewis that we would welcome the samples and make every possible use of them.

We want to sell as many Donaldson posters as we can for without doubt there are a great many advertisers who can use this service with excellent results especially in our smaller towns. Several of the branches have men covering small towns and later on a systematic sales effort will be made to build up local business to the highest pos-

(Testimony of Charles H. King)

sible point in all our small towns and this is where the Donaldson Service will come in.

At the present time we have no price for quantities in less than five but we expect to have prices very shortly so that you can sell in quantities from two up.

When Mr. Lewis is in your territory he will work in conjunction with your salesmen but as it is impossible for him to remain at any one point for any great length of time naturally he will have to leave the prospects on which he has worked in the hands of our salesmen. We assured Mr. Lewis that we would work on these prospects just as diligently as if he were on the ground himself and in the event of a sale the Donaldson Litho. Co. would be credited with the 10% commission the same as if the deal were closed by him. Further we will allow 10% to the Donaldson Litho. Co. on sales made direct with a customer for Donaldson service whether Mr. Lewis worked on the account or not. This commission will be more than offset by the saving in designing expense.

There are many cases where Donaldson posters can be used where hand-painted posters would be prohibitive and as this is business which can be developed and at a profit, we ask that you put the Donaldson service in the hands of your salesmen with instructions to use it wherever it can be used to the benefit of the customer.

Another thing Mr. Lewis spoke about was the fact that none of our salesmen seemed to be acquainted with the Donaldson prices. These prices are on the last page of our book of specifications and we ask that you give

(Testimony of Charles H. King)

2—Donaldson Service Posters

each salesman a copy of this price list.

We also agreed to allow the one-year rate on contracts sold to what might be termed "seasonable customers." There are advertisers who desire to use say three months in the Spring and three months in the Fall. On a contract of this kind signed up for two years so as to make twelve months in all we will allow one-year rate; that is conditioned upon the fact that the Donaldson Litho. Co. will allow us the one-year rate on the poster for after all our price on the Donaldson Service is based upon our space plus the cost of the paper.

[Stamped on face of page 1]: REFERS TO BULLETIN DATED No. 22 Aug. 26-21

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 208 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: In 1922 the screen process for posters had not been developed and the cost of our painted posters was in many cases prohibitive.

Foster & Kleiser Company's office bulletin No. 265, dated September 11, 1924, was thereupon received in evidence and marked Plaintiff's Exhibit 209 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 209.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN

No. 265.

San Francisco, Cal.,

SEPTEMBER 11, 1924.

FOSTER AND KLEISER COMPANY

Messrs. Walter F. Foster	San Francisco
Geo. W. Kleiser	Los Angeles
A. F. Lausen, Jr.	Seattle
W. F. Thompson	Portland
R. A. Edwards	Oakland
Albert Mortenson	Long Beach
R. S. Montgomery	San Diego
R. W. Olmsted	Tacoma
E. R. Everett	Sacramento
A. W. Zamloch	Fresno
G. B. Haynes	Medford.
S. Carman	
Miss H. Salin.	

(Testimony of Charles H. King)

Gentlemen:

Re: PRICE LIST DONALDSON SERVICE.

Following are revised prices on Donaldson's service
EFFECTIVE January 1, 1925:

DONALDSON SERVICE.

(Advertiser is privileged to select locations)

SAN FRANCISCO LOS ANGELES OAKLAND,
ALAMEDA AND BERKELEY

TERM		5 to 9 Inc.	10 to 24 Inc.	25 or Over
12 months	Unillum.	22.50	20.00	17.50
12 months	Illum.	40.00	37.50	35.00
6 to 11 mos.	Unillum.	25.00	22.50	20.00
6 to 11 mos.	Illum.	42.50	40.00	37.50
3 to 5 mos.	Unillum.	27.50	25.00	22.50
3 to 5 mos.	Illum.	45.00	42.50	40.00

ALL OTHER CITIES AND TOWNS OPERATED
BY FOSTER AND KLEISER COMPANY

TERM		5 to 9 Inc.	10 to 24 Inc.	25 or Over
12 months	Unillum.	20.00	17.50	15.00
12 months	Illum.	37.50	35.00	32.50
6 to 11 mos.	Unillum.	22.50	20.00	17.50

(Testimony of Charles H. King)

6 to 11 mos. Illum.	40.00	37.50	35.00
3 to 5 mos. Unillum.	25.00	22.50	20.00
3 to 5 mos. Illum.	42.50	40.00	37.50

An advertiser using Donaldson Posters desiring to contract for a standard set showing may do so by paying the regular price for the set showing and furnishing the posters.

Yours very truly,

FOSTER AND KLEISER COMPANY

A. F. Lausen Jr

A. F. Lausen, Jr.

General Manager

AFL:IM

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 209 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 288, dated December 10, 1924, was thereupon received in evidence and marked Plaintiff's Exhibit 210 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 210.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 288

San Francisco, Calif.,

December 10, 1924

FOSTER AND KLEISER COMPANY

Messrs. Walter F. Foster

Mr. D. R. McNeill, Jr.	San Francisco	George W. Kleiser
Mr. Georges Musaphia	Los Angeles	A. F. Lausen, Jr.
Mr. G. E. O'Neil	Seattle	W. F. Thompson
Mr. H. P. Dueber	Portland	R. A. Edwards
Mr. Grant M. Smith	Oakland	Albert Mortenson
Mr. Geo. A. Sample	San Diego	R. S. Montgomery
Mr. Lyle Abrahamson	Tacoma	R. W. Olmsted
Mr. W. C. Brown	Long Beach	E. R. Everett
Mr. W. H. Funk	Sacramento	A. W. Zamloch
Mr. P. H. Pande'	Fresno	G. B. Haynes
Mr. M. D. Cole	Medford	S. Carman

Miss Salin.

Re: Commission to Donaldson Lithographing Company

Gentlemen:—

On and after this date the following are the commission rates to be allowed the Donaldson Lithographing Company:

(Testimony of Charles H. King)

DONALDSON SERVICE POSTERS

A commission of 10% monthly is to be allowed on the space used for service posters irrespective of whether the Donaldson representative closed the order or not. No commission is to be allowed on the cost to us of the posters.

NATIONAL ACCOUNTS

On all national accounts where the Donaldson Lithographing Company sends us an order in accordance with our specifications for standard set showings a commission of 16-2/3% is to be allowed.

COOPERATIVE NATIONAL ACCOUNTS

(a) Where the manufacturer furnishes the paper and participates in the cost of posting, if the Donaldson Lithographing Company assumes the responsibility of collection both from the manufacturer and dealer they are to be allowed a commission of 16-2/3%, in which event the invoice for the entire posting is to be rendered direct to

Bulletin No. 288 - 12-10/24 - Pg. 2

Donaldson Lithographing Company.

(b) Where the manufacturer furnishes the paper and the dealer pays the entire cost of the posting, and where we invoice and collect from the dealer the Donaldson Lithographing Company is to be allowed a commission of 10% on the amount of the invoice.

(Testimony of Charles H. King)

(c) Where the manufacturer furnishes the paper and the dealer pays the entire cost of the posting but where we invoice and collect from the Donaldson Lithographing Company, the Donaldson Lithographing Company is to be allowed a commission of 16-2/3%.

The Donaldson Lithographing Company has requested, on those cooperative national accounts where the manufacturer participates in the cost of the posting, that we clear the entire order through them to facilitate their handling of the account. This would apply to accounts such as Willard Battery, Hoover Vacuum Cleaner, Oshkosh Overalls and Apex Washing Machines.

If our own salesmen close the dealers on accounts of this nature a clause should be inserted in our regular contract form that: "The dealer's share of the posting is to be paid to the Donaldson Lithographing Company, Newport, Kentucky."

The original contract should then be sent by you direct to the Donaldson Lithographing Company, at the same time sending a copy to Mr. Carman of our General Posting Department with instructions to him to reserve the space, keeping a third copy for your own files. The Donaldson Lithographing Company will then send to our General Office in San Francisco their own contract to cover the full amount of the space, which contract will be forwarded to you by the General Posting Department in the usual manner.

(Testimony of Charles H. King)

Under these conditions the Donaldson Lithographing Company is responsible for collecting both the manufacturer's and the dealer's share and will pay us the entire amount of the posting for which we will allow them the full 16-2/3% commission even though our own salesman made the sale.

There are no changes to be made in the methods which we have been following in the past in the handling of any other Donaldson accounts or their service posters.

Yours very truly,

FOSTER AND KLEISER COMPANY

A. F. Lausen Jr.

A. F. Lausen, Jr.

General Manager

AFL:IM

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 210 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 363, dated September 29, 1925, was thereupon received in evidence and marked Plaintiff's Exhibit No. 211 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 211.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 363.

San Francisco, Calif.
SEPTEMBER 29, 1925.

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Geo. A. Sample	San Diego
Mr. W. C. Brown	Long Beach
Mr. Lyle Abrahamson	Tacoma
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford,
Mr. W. H. Funk	Sacramento.
Mr. W. F. Foster	Mr. Noble Hamilton
Mr. Geo. W. Kleiser	Mr. S. Carman
Mr. A. F. Lausen, Jr.	Miss H. M. Salin
—Mr. W. F. Thompson	
Mr. R. S. Montgomery	
Mr. Albert Mortenson	
Mr. R. A. Edwards	
Mr. R. W. Olmsted	
Mr. G. B. Haynes	
Mr. A. W. Zamloch	

(Testimony of Charles H. King)

Mr. E. R. Everett, New York Office.

Gentlemen: Re: Pice List Donaldson Service.

Effective immediately and superseding all former bulletins on the subject of the price list of Donaldson service, the price for Donaldson service posters on selected locations will be the regular catalog price for the poster panels on the basis of prices for quantities other than standard set showings plus the actual cost of the posters.

Prices for poster panels other than standard set showings are

Illuminated - - - -\$45.00 a panel per month,

Unilluminated - - - 15.00 a panel per month.

The price of the Donaldson service posters vary in accordance with the number of posters purchased at one time. Therefore the number of posters used per month and the length of the time covered by the contract will naturally influence the price.

The Donaldson Lithographing Company as heretofore are to receive 10% commission on the COST OF THE SPACE ONLY. An advertiser using Donaldson posters desiring to contract for a standard set showing may do so by paying the regular price for the standard set showing and furnish the posters.

Very truly yours,

FOSTER AND KLEISER COMPANY

A. F. Lausen Jr.

A. F. Lausen, Jr.

General Manager

AFL*AP

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 211 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 379, dated December 10, 1925, was thereupon received in evidence and marked Plaintiff's Exhibit 212 in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 212.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 379.

San Francisco, Calif.
DECEMBER 10, 1925.

Foster and Kleiser Company,	
Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. W. C. Brown	Long Beach
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford.

(Testimony of Charles H. King)

Gentlemen: Re: Remittances to Donaldson Lithographing Co.

We are in receipt of a letter from Mr. A. L. Lewis, the Pacific Coast representative of the Donaldson Lithographing Co., with which he enclosed a copy of a letter from his Home Office under date of November 30th over the signature of Mr. C. R. Slater, Assistant Sales Manager, which we are quoting:

“We wish you would take up with Foster & Kleiser the question of reimbursing us in full for such items as they are paying instead of paying for the paper at one time and then in a later check our commission on the space. I do not know why they divide their remittances this way but it is very confusing to our Bookkeeping Department, especially when Foster & Kleiser does not specify the number of our invoice for which the payment is being made.

“You understand that if on a certain contract the cost of the paper amounts to \$25.00 and our commission on the space amounts to \$5.00, the total charge to Foster & Kleiser is \$30.00, and we make out our invoice for that total amount, \$30.00. Well now today they may send us check for \$25.00 and then next week or in the next two or three weeks they may send us a check for \$5.00. When we receive those individual remittances there isn't any way for us to tell just what charges they are to be applied against, and as already stated, this is very confusing to our Bookkeeping Department, and sooner or later it is going to cause a good deal of trouble with our account conforming to Foster & Kleiser's account.

“So, will you please ask them in sending us remittances to please remit in full at one time for both the paper and

(Testimony of Charles H. King)

the commission on the space, and ALSO SPECIFY THE NUMBER OF OUR INVOICE FOR WHICH PAYMENTS ARE BEING MADE. After taking this up with them please let us know whether or not they will accommodate us in this regard."

No. 379.

#2:

Should it happen that this letter is written because of remittances received by them from your office we would ask that you kindly do the necessary to have your remittances to the Donaldson Lithographing Co., go forward in the manner as outlined in Mr. Slater's letter quoted which we understand is the method which has been followed in the past by our Company.

We thank you.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

Ass't. General Manager

WFT:LMS

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 212 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 435, dated September 20, 1926, was thereupon received in evidence and marked Plaintiff's Exhibit 213 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 213.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN

#435

San Francisco, Calif.

Sept. 20, 1926

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. W. C. Brown	Long Beach
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford
Mr. Geo. W. Kleiser	Mr. G. B. Haynes
Mr. Walter F. Foster	Mr. Blaine Klum
Mr. A. F. Lausen, Jr.	Mr. E. R. Everett, N. Y.
Mr. W. F. Thompson ✓	Miss H. M. Salin
Mr. R. S. Montgomery	
Mr. Noble Hamilton	
Mr. S. Carman	
Mr. A. W. Zamloch	
Mr. R. A. Edwards	
Mr. Albert Mortenson	
Mr. R. W. Olmsted	

(Testimony of Charles H. King)

Gentlemen: RE: PRICES POSTER PANELS OTHER
THAN STANDARD SET SHOW-
ING. PRICE LIST DONALDSON
SERVICE

In our new catalogue about to be published is a revised quotation of prices for poster panels other than standard set showings, which will be effective immediately.

These prices are:

Illuminated	\$45.00 a panel per month
Unilluminated	10.00 a panel per month

You will note that this is a reduction of \$5.00 per month on the unilluminated panels. This reduction is the result of the returns to the questionnaire recently forwarded to all our branches on this subject.

The reduction on prices for poster panels other than standard set showings automatically influences the prices set forth in Bulletin No. 363 on the subject "Price List Donaldson Service" issued under date of September 29th, 1925, over the signature of Mr. A. F. Lausen, Jr.

Will you kindly mark your records in keeping with this information.

Yours very truly,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

WFT/EB

Assistant General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 213 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Charles H. King)

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 461, dated May 16, 1927, was thereupon received in evidence and marked Plaintiff's Exhibit 214 in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 214.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
#461

San Francisco, Calif.
May 16, 1927.

Foster and Kleiser Company,	
Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. P. H. Pande'	Long Beach
Mr. M. D. Cole	Fresno
Mr. A. A. Hayden	Medford

(Testimony of Charles H. King)

Gentlemen: RE: PRICE LIST DONALDSON
SERVICE

We have been given a revised price list by Mr. Lewis, Pacific Coast Representative of the Donaldson Lithographing Company, copies of which it is our pleasure to herewith enclose. We believe that the price list is self-explanatory and should be used in connection with the Donaldson selling plan as referred to in Office Bulletin #435 in which Bulletin #363 is referred to.

Very truly yours,

FOSTER AND KLEISER COMPANY,

W. F. Thompson
W. F. Thompson,
Assistant General Manager.

WFT:IHO

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 214 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 554, dated June 12, 1931, was thereupon received in evidence and marked Plaintiff's Exhibit 215 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 215.]

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN

#554

San Francisco, Calif. June 12, 1931

TO EXECUTIVES, BRANCH MANAGERS, AND
GENERAL OFFICE DEPARTMENT HEADS:
RE: COMMISSION TO DONALDSON LITHO-
GRAPHING CO.

Reference is made to Office Bulletin No. 288, with particular regard to the introduction and paragraph 1 which reads:

“On and after this date the following are the commission rates to be allowed the Donaldson Lithographing Company:

“DONALDSON LITHOGRAPHING POSTERS

“A commission of 10% monthly is to be allowed on the space used for service posters, irrespective of whether the Donaldson representative closed the order or not.”

Our plan of agency recognition has brought about a condition which calls for an adjustment of commission on this particular Donaldson service. On and after the date of this Bulletin you should, on Donaldson Service Posters, adopt the following procedure:

A commission of 10% monthly is to be allowed on the space used for service posters, except where the particu-

(Testimony of Charles H. King)

lar account is one controlled by an advertising agency which has received our formal agency recognition. In such case, a commission of 16-2/3% is to be allowed; 10% to be paid by you direct to the advertising agency, and 6-2/3% to the Donaldson Lithographing Company.

It is thoroly understood by the representative of the Donaldson Lithographing Company that he is to work in perfect harmony with the agency policy of Foster and Kleiser Company and that he will cooperate with our account executives in contacting agencies and accounts.

This bulletin in no way supersedes your previous instructions on national accounts and cooperative national accounts but has to do only with Donaldson Service posters for accounts controlled by advertising agencies.

Kindly acknowledge this bulletin.

A. F. Lausen Jr.

A. F. Lauson, Jr.

General Manager

AFL:M

No. 5673-C Special Site vs. Foster & Kleiser Plf
Exhibit No. 215 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 558, dated October 28, 1931, with letters attached, was thereupon received in evidence and marked Plaintiff's Exhibit 216 in evidence, and is in words and figures as follows, to-wit:

(Testimony of Charles H. King)

[PLAINTIFF'S EXHIBIT No. 216.]

Mr. Kleiser Jr.

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
#558

San Francisco, Calif. October 28, 1931

TO EXECUTIVES, BRANCH MANAGERS, AND
GENERAL OFFICE DEPARTMENT HEADS:

RE: DONALDSON LITHOGRAPHING CO.

Attached hereto you will find:

1. Copy of our letter of October 5th, 1931, addressed to Mr. A. L. Lewis, Pacific Coast Representative of the Donaldson Lithographing Co., 218 So. Carson Road, Beverly Hills, California;
2. Copy of letter dated October 19, 1931, from the Donaldson Lithographing Co., Newport, Kentucky, signed by Mr. R. D. Carrel, Sales Manager, addressed to Foster and Kleiser Company, Eddy Street at Pierce, San Francisco, California, attention Mr. A. F. Lausen, Jr., General Manager;
3. Copy of our reply thereto under today's date.

The arrangement set forth in our letter of October 5th, 1931 is that under which we will work with Mr. Lewis until further notice. It cancels and supersedes all previ-

(Testimony of Charles H. King)

ous arrangements and understandings that we have had with the Donaldson Lithographing Company.

Please advise.

A. F. Lausen Jr.

A. F. Lausen, Jr.

General Manager

AFL.Jr/PH

Encl.

No. 5673-C Special Site vs. Foster & Kleiser Plf
Exhibit No. 216 Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing: The letters read yesterday with reference to the Camel Cigarette contract and others were not all the efforts we made to secure business. We had around 200 boards at this time. In 1927 my signboard inventory shows that we had 600 or thereabouts, and almost any time we could have gotten 18 or even 36 boards together and call it a quarter or a half showing if we had wanted to, that is, if we had a sale for them. In those quarter or half showings we did not have the distribution which is required to make a standard set showing. We had nothing on Webster Street, Harrison, West 14th Street, West 12th Street, West 8th Street, in Oakland. We weren't able to get anything in there. Foster & Kleiser had everything that was available tied up. This showing which we sold the Camel was not a standard set showing. A standard set showing is half illuminated and half unilluminated. This showing that we sold to Camel was only 25 per cent illuminated. We weren't able to make up a

(Testimony of Charles H. King)

showing for them, so we cooperated with the Coast Advertising Company, who were at that time an independent company operating in Oakland, and they took half of it on their plant. During the life of that contract, the Coast was bought by Foster & Kleiser. I recall reading a letter yesterday about making some adjustments or some cooperation in connection with the account. Without regard to what is in the letter, the Reddington Agency or the Camel account wanted changes made in the locations and Foster & Kleiser wouldn't make the changes, so it was necessary for us to do so. We did not get a renewal of the contract.

RE-CROSS EXAMINATION

BY MR. CLARK:

It would be impossible to describe and enumerate every outdoor advertising location which Foster & Kleiser had under lease from 1929 down to the time this case began on Webster, Harrison, West 14th, West 12th and West 8th Streets in Oakland.

MR. CLARK: Then, I now move to strike out the witness' statement that Foster & Kleiser had everything on those streets tied up, it being now obviously a conclusion of the witness.

THE COURT: Well, I don't think that sufficiently appears. Motion denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 206.

Witness continuing: It would not be possible to name all of those locations or the year in which Foster & Kleiser Company had them tied up.

(Testimony of Mrs. Martha S. Montgomery)

BY MR. STERRY:

On the Bruecker location we were getting \$22.50 a month for the wall and \$75 for the roof. We lost the wall and still have the roof. The roof is designed for a paint board to be sold with other boards. If we had lost the roof, my formula would not have given me a much higher value for the roof than it would for the wall because the wall sign was not sold at its market value. The value would possibly be the same. The roof sold at its market value and I got as much as I thought I could get for it. By applying the formula to obtain the value of the wall, I assumed that we would have gotten \$75 a month for it, but we figured to get \$100 for the wall. If I lost the roof now, I think I could still apply my formula to it even in view of the fact that we had it unsold for two years.

Thereupon

MRS. MARTHA S. MONTGOMERY

was recalled as a witness on behalf of the plaintiff and testified as follows:

DIRECT EXAMINATION

BY MR. GLENSOR:

I prepared these sheets marked "Interchange of business between Special Site Sign Company and other independent plants 1917 to 1934 inclusive." The figures on there are all actual figures as taken from the Special Site Sign Company's books. Special Site Sign Company occasionally sends advertising to be posted on the boards of other companies. In some cases we get a commission on that business and in some cases we do it on a reciprocity basis. In cases

(Testimony of Mrs. Martha S. Montgomery)

where we have waived the commission I have shown that the commission was waived on these papers and I have not added any figures in them except where we have actually collected a commission. On occasion other independent companies send advertising to be placed on our boards for which we receive compensation from which we pay a commission to the other advertising company. By this sub-heading on this paper, "Including business secured by Special Site Sign Company through independent solicitors," I refer to solicitors who, when they get accounts, send them to independent companies, as distinguished from the Association plants. The first item on these papers is "Business placed on Special Site Sign Company's plant" and in that column appears the name of the plant or solicitor securing the business for Special Site Sign Company. The next column shows the name of the advertiser. The column headed "Commission earned by plant or solicitor" means the actual commission paid to the man sending us the business. I have taken no hypothetical transactions here at all. They are all actual transactions from the years 1927 to 1933. The column there showing the dates and amount of the contracts shows the gross amount of the contracts after deductions caused by cancellations.

Q And what is the total amount of money received by the Special Site Sign Company from exchange of business with independent plants and commissions?

(Testimony of Mrs. Martha S. Montgomery)

MR. CLARK: Objected to on the ground it is irrelevant, incompetent, immaterial and misleading.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 207.

A The net amount, deducting cancellations, is \$111,600.31.

Witness continuing: The total amount of commissions received by Special Site Sign Company or paid by them to other independents amounted to \$7,233. I do not distinguish whether they were received by Special Site Sign Company or paid by Special Site. The right-hand column of these papers is headed "Date Plant Purchased By Foster & Kleiser." In that opposite some of these companies, there are dates. Opposite the names of some of them there is no date. Where that column is blank it is intended to mean that that plant has not been purchased or absorbed by Foster & Kleiser.

The papers referred to by the witness were thereupon received in evidence and marked Plaintiff's Exhibit 217 in evidence, and are in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 217.]

INTERCHANGE OF BUSINESS BETWEEN SPECIAL SITE SIGN COMPANY AND OTHER INDEPENDENT PLANTS—1917 to 1934, Inclusive.

(1) BUSINESS PLACED ON SPECIAL SITE SIGN CO. PLANT BY OTHER INDEPENDENT PLANTS OR INDEPENDENT SOLICITORS:

Name of Plant or Solicitor	Account Name and Type of Display	Date and Term	Amount of Contract (Face Value)	Amount Received (Cancellation, if any, deducted)	Commission to Plant or Solicitor	Date Plant Purchased by Foster & Kleiser Co.
Robt. Cordtz Co., San Diego	Savage Tires Eight 10x50 ft. Bulletins, @ \$20 ea. per month	1917 12 Months	\$ 1,920.00	\$ 1,920.00	\$288.00	
"	Federal Tires Thirty-three 10x25 ft. Bulletins	Apr. 1, 1918 4½ Year Term	10,098.00	10,098.00	\$504.90	
Ivan B. Nordham Co., New York	Ajax Tires 2—16x100 ft. Bulletins 1—10x60 ft. 5—10x50 ft.	May 20, 1919 3 Year Term	6,140.00	6,140.00		
Robt. Cordtz Co., San Diego	Patton Paint 3—10x50 ft. Bulletins	Aug. 1, 1919 3 Year Term	3,456.00	3,456.00		
Independent Adv. Co., San Francisco	G & J Tires 17—10x50 ft. Bulletins @ \$22.50 ea. per month	Nov. 1, 1920 2 Year Term	7,776.00	4,545.00		July 17, 1922

F. B. Heider, San Francisco	Luthy Battery 37—10x50 ft. Bulletins @ \$20.00 ea. per month	Oct. 7, 1921 3 Year Term	26,640.00	9,461.68	888.00	July 1, 1929
Independent Advertising Co., San Francisco	Spring Eze 15 10x50 ft. Bulletins	Feb. 23, 1922 3 Year Term	6,750.00	2,437.50	121.88	July 17, 1922
Robt. Cordtz Co., San Diego	American Tobacco Co. 160 3-Sheet Panels	Feb. 21, 1925 12 Mos. Term	3,840.00	3,840.00	Commission waived	
C. E. Stevens Co., Seattle, Wash.	Hyvis Oil 32—10x50 ft. Bulletins 4—10x25 ft. " 22— 5x12 ft. "	Oct. 14, 1926 2 Year Term	13,680.00	11,812.88	590.64	
West Coast Adv. Co., San Francisco	Isuan Ginger Ale 8 City Bulletins	Aug. 1, 1928 3 Year Term	10,800.00	3,495.00	Commission Waived	
M. F. Reddington, Inc., New York	Camel Cigarettes 40 24-Sheet Posters	Jan. 1, 1930 1 Year	7,008.00	7,008.00	1,168.00	Retired from business Oct. 4, 1932.
La Fon System, Los Angeles	La Vida Mineral Water Posters & Painted Bulletins City and Highway	Years 1930 and 1931	4,070.00	1,294.85	Commission waived	April 1, 1930
C. E. Stevens Co., Seattle, Wash.	Coca Cola 24-Sheet Display	Years 1931 to 1934, inc. intermittently	9,553.60	9,553.60	114.90	
D. G. Westbrook Co., Russ Bldg., San Francisco	Star Olive Oil 7—10x50 ft. Bulletins	Dec. 19, 1929 1 Year Term	1,176.00	1,176.00	117.60	Retired from business November, 1930
Forward to Sheet #2.....			<u>\$112,907.60</u>	<u>\$76,238.51</u>	<u>\$3,793.92</u>	

Sheet #2	Name of Plant or Solicitor	Account Name and Type of Display	Date and Term	Amount of Contract (Face Value)	Amount Received (Cancellation, if any, deducted)	Commission to Plant or Solicitor	Date Plant Purchased by Foster & Kleiser Co.
	Forward from Sheet #1.....			\$112,907.60	\$76,238.51	\$3,793.92	
	D. G. Westbrook Co., Russ Bldg., San Francisco	W. P. Fuller & Co. Three Animated DeLuxe Bulletins	Dec. 9, 1929 5 Year Term	\$18,000.00	\$13,440.00	1,620.00	Retired from Business November, 1930
	"	Pet Milk Four DeLuxe Illuminated Bulletins	Feb. 25, 1930 3 Year Term	14,250.00	4,006.80	171.00	"
	"	M. J. B. Coffee Two Animated DeLuxe Bulletins	July 1, 1930 3 Year Term	9,720.00	7,008.00	558.00	"
	"	Sinclair Oil Three Painted Bulletins One Painted Bulletin	June 14, 1930 3 Yr. Term 1 Yr. Term	4,992.00	4,992.00	748.80	"
	"	Superba Products Two Painted Bulletins	Sept. 19, 1930 3 Year Term	5,700.00	5,700.00	342.00	"
	Pacific Outdoor Adv. Co., Los Angeles	Kwickorn Two Hand-Painted Posters, Ill.	March 6, 1933 Two Months	215.00	215.00	Commission Waived	

(2) COOPERATION GIVEN BY SPECIAL SITE SIGN CO. IN PLACING OF BUSINESS ON OTHER INDEPENDENT PLANTS:

J. R. Owens, Elevated Sign Service, Seattle, Wash.	Emerson Drug Co. Bromo Seltzer Wall Displays	March—1920	Unknown	Commission Waived	"	"	January 19, 1922
Allen & Watt and Union Advertising Co., Los Angeles	Bass Hueter Paints Painted Bulletins	March, 1924	"	Unknown	"	"	March 10, 1924
"	Standard Fence Co. Painted Bulletins	January, 1924	"	"	"	"	March 10, 1924
C. E. Stevens Co., Seattle, Wash.	National Lead 24-Sheet Posters	February, 1933	"	"	"	"	"
Robt. Cordtz Co., San Diego	"	"	"	"	"	"	"
Pacific Outdoor Adv. Co., Los Angeles	"	"	"	"	"	"	"
Sampson & Perrin, Long Beach	"	"	"	"	"	"	"
Retzloff Adv. Co., Eureka	"	"	"	"	"	"	"

TOTAL AMOUNT OF CONTRACTS (Face Value).....	\$165,784.60
NET AMOUNT RECEIVED BY SPECIAL SITE SIGN CO. UNDER SAID CONTRACTS (Cancellations deducted).....	\$111,600.31
COMMISSIONS RECEIVED BY INDEPENDENT PLANT OR SOLICITOR.....	\$7,233.72

(Testimony of Mrs. Martha S. Montgomery)

Witness continuing: I prepared Plaintiff's Exhibit 128, a summary of operating statements by which I showed the gross income of the Special Site Sign Company from 1917 to 1934, inclusive. This exhibit shows the entire gross income under that heading from all sources of the Special Site Sign Company. I prepared and gave to Mr. Westbrook a statement of the income from advertising sales for the purpose of making a graph. I have seen this graph, Plaintiff's Exhibit 190, before and have examined the black line figures which represent our actual income from sales of advertising. There is a variation of some \$1,300 or so between the figures in Plaintiff's Exhibit 128 and those shown on this graph, which was miscellaneous income that we had apart from advertising sales.

On these financial statements of the Special Site Sign Company I set up the capital value of the assets; for example, if a signboard is built, I take it into account as a capital asset on the first of each year by inventory, on the basis of its salvage value. The automobiles are carried at cost less depreciation each year, and leases are carried at approximately the cost of securing them. The office furniture and fixtures are also carried on the books at cost less depreciation.

CROSS EXAMINATION

BY MR. CLARK:

I am a stockholder of the Special Site Sign Company. The company owes both me and my mother money. Every one of the items on Plaintiff's Exhibit 217 will be found in the books of the company except the first item for the year 1917. That is the Robert Cordtz Company for the

(Testimony of Mrs. Martha S. Montgomery)

Savage Tire account. Our books don't go back that far and that is the only one.

Q So there is nothing in any of the books of account now in court or available to me which would support that item?

A That one item of 1920 was given to me by Mr. King and I confirmed it with Mr. Cordtz before I made the statement.

MR. CLARK: I move to strike out the part of the witness' answer wherein she says that it was given to her by Mr. King and she confirmed it by Mr. Cordtz, both being as conclusions; and, furthermore, as not being responsive and being immaterial, anyway, the defendant being entitled to the date from which the summary is made.

THE COURT: Denied.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 208.

Witness continuing: All the data which I have incorporated in the chart will be found in the books of account with the exception of the first item. When I spoke of the salvage value in connection with our structures that is approximately the value of the lumber and the material in the signboard taken down. The value that we have on the books was figured out in 1924 by Mr. King and myself and it has been carried at approximately the same through the years. It has been approximately the same value for the types of signs as we arrived at at that time. The physical value of the sign is not very great. It is the

(Testimony of Mrs. Martha S. Montgomery)

income value from it. The salvage value is not based upon or measured by the income value in any degree. Nowhere in the books of the Special Site Sign Company are there any figure or figures of cost for new construction during any year in which I have been employed by the Special Site Sign Company. We don't carry it that way on the books. Nowhere in the books is there any data showing the cost of construction for all years to date, nor is there anything in the books from which anyone could derive the average cost per bulletin or check the average presented by me in Plaintiff's Exhibit 127. On this Plaintiff's Exhibit 127 the figures on the right-hand column represent the average cost. I have already testified that I calculated that average and then destroyed the data and documents, believing there was no further use or need to keep the calculations or the documents from which I calculated it. There are seven different kinds of bulletins and panels listed there and I have given in the right-hand column the average cost per bulletin. We figured each one out carefully from the material that went into the sign and have arrived at these figures as being the correct average cost of the different type of bulletins enumerated. We have not carried the cost of material in our books. When we paid our lumber bills we charged it to painting and construction. Under this item we have items and entries which may be painting and construction or which may be the cost of lumber. Under that item we also carry paint and metal, nails, hardware and everything that goes into a sign. It is all charged to painting and construction on the books, without reference to time, except occasionally. Nowhere on the face of that account is it indicated how

(Testimony of Mrs. Martha S. Montgomery)

much painting and construction and how much lumber and how much metal and how much nails went into a 4x6 target, nor does it indicate anywhere how much of those materials went into a 25-foot poster panel or into a 10x50 highway bulletin. I did not get any help from the painting and construction account in segregating the value of the 10x50 from the average value of a 4x6 target. I used the bills that applied to the sign at the time the sign was built, and figured out the cost per lineal foot. Some signs are perhaps built 10 feet from the ground and some 20 feet, and more rough lumber would go into one than the other, but we figured it and averaged it, and arrived at this cost per lineal foot. We figured the actual cost of the construction of a 10x50 bulletin. We have done it dozens of times, each one separate, as it has been completely built. Then we averaged a great number of them and arrived at this figure. We have used that average per lineal foot for quite a few years now. I had figured the labor cost per day recently. This other cost we arrived at some years ago and there has been so little difference that we used the same schedule. There is nothing in the books of account from which you could check the accuracy of this schedule, and there is nothing available which would enable you to check the accuracy of it. Under the heading "Cost of paint crew" on this schedule there is an item "Journeyman \$12 a day." The average cost of the construction crew per day was \$24 and the paint crew was \$29, without road expense. The item for the journeyman painter is not an average cost, but the actual amount paid. It is not a fact that \$12 a day was the highest union rate for journeymen painters. We paid as high as \$71 a week for

(Testimony of Mrs. Martha S. Montgomery)

44 hours' work. That was when Harry Stingle was working for us, and he worked about 8 years for us. I would say we paid him at the rate of \$71 a week for at least three or four years of that time. There is no data in our books from which you can ascertain the number of signs that were constructed during any given period, or that were being worked upon during any given period.

On Plaintiff's Exhibit 128, which is a summary of operating statements, the last figure there is for 1934, \$33,252.98. That exhibit was apparently introduced on December 14, 1934 and does not carry the year's operations to the close of the year but I was able to figure out from the books what our income would be for December at the time I made this up. That is the gross income; I don't show any expense. I could not figure out what our expense would be during that time. I made no allowance at all on this schedule for the fact that the year was not yet over. It is all in our current books.

The contract register, marked Plaintiff's Exhibit 121-A for Identification, is complete, except for our present current live contracts which were never kept in there. Those are the transfer sheets. Plaintiff's Exhibit 121-A for Identification is complete for the period that it covers.

According to the books now before me, the rental expenses of the Special Site Sign Company in 1926 were \$5,828.28, in 1927 \$7,293.39, in 1928 \$6,781.77, 1929

(Testimony of Mrs. Martha S. Montgomery)

\$7,222.13, 1930 \$7,548.98, in 1931 \$6,705.90, in 1932 \$5,961.65, and in 1933 \$5,547.71.

The company does not keep a record showing the cost of various operations. We don't have any separate account for maintenance. It goes under painting and construction. I can't take any item under painting and construction and tell you whether it is for maintenance or construction. We don't keep it separate. The same thing is true with respect to posters. Wages are charged up per week, and we don't make any reference to whether it was maintenance work or building of new structures. The same thing is true with respect to the cost of structures and the cost of removing structures.

REDIRECT EXAMINATION

BY MR. GLENSOR:

Mr. King and I worked out the salvage value of various types of signs in 1924. These signs that have been constructed since 1924 have been adjusted each year by inventory.

BY MR. CLARK:

The first of each year we take an inventory of all our signs and make an entry on the books to reconcile the value to the previous year's inventory so that any new signs that have been added are set up in the books in that way on the first of each year. We take our inventory on our books at the beginning of the year 1933 at so much, being the salvage value. That was arrived at January 1, 1924 when

(Testimony of Mrs. Martha S. Montgomery)

we made out the inventory since 1920. It has been carried on the books through these years at the same value for each type of board. If we lost a 10x50 bulletin, that simply disappeared from our inventory at salvage value. I did it each year in the total inventory. We made out a new inventory the first of January each year, and if it was more than it was the previous year we entered that sum so as to show the correct salvage inventory value as of January 1st. If on January 1, 1926 we had two more 10x50 boards than we had on January 1, 1925, we added the salvage value of those two boards for January 1, 1926 at the same value that the 10x50 boards had in 1925, and went through a similar operation with all the boards.

Mr. Glensor thereupon read in evidence a portion of office bulletin No. 550-A dated April 6, 1931, in words and figures as follows:

“The instructions herein contained supersede and cancel the following office bulletins: No. 74, No. 209, 242, 242-A, 245, 446, and any and all instructions or policies inconsistent herewith contained in any other office bulletins, general correspondence or otherwise.

“Very truly yours,
“FOSTER AND KLEISER COMPANY,
“George W. Kleiser, President.”

A portion of Foster & Kleiser Company's bulletin No. 478, dated August 27, 1927, was thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-M in evidence. Said portion so received in evidence is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

“Gentlemen:

RE: PERCENTAGE CHARTS OF BRANCH
OPERATIONS AND UNIT SPACE RENTAL
CHARTS.”

The portion I am reading is a paragraph on page 2.

“Unbuilt Space shows an increase of one per cent over last year. One per cent of the income would mean an increase of about \$75,000 for a yearly period. This is not too much to pay for insurance, provided it is really insurance. The answer to the question of whether or not the amount of unbuilt space is good insurance will be found in the amount of rentals paid for our built space. This item of space rental (for built space) has increased 1% likewise and we are now paying slightly over 10% of our gross income for built space. Fortunately, the Long Beach Branch shows it is possible to reduce this item of space rental or at least the percentage it bears to the income. Three years ago the Long Beach Branch was paying a greater percentage of its income for space rentals than any other Branch on the coast. At the present time it is nearly 2% below the combined average.”

It was thereupon stipulated that the portion so read into evidence was not the sole subject of the bulletin but that the bulletin covered generally the results of a statistical survey of the branches.

(Testimony of Mrs. Martha S. Montgomery)

A portion of Foster & Kleiser's bulletin No. 238, dated June 13, 1924, was thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibit 2-N in evidence. Said portion so received in evidence is in words and figures as follows, to-wit:

“Subject: Quarterly Percentage Charts.

“The Maintenance of Plant item has shown the correct trend throughout the year and is almost down to the figure of a year ago. The Long Beach and Sacramento Branches are still high in this item but with the completion of their building programs should rapidly reduce the figures of last year. This item, Maintenance of Plant (Prime Cost) no longer appears on the General Monthly Reports as prepared by the branches. In its place there now appears two items, ‘Building Plant’—‘taking down plant’ and these two accounts may be carefully studied by reference to Sheet No. 7 Inventory of Plant and Sheets Nos. 8 and 9, which show the cost of constructing and taking down plant. It is doubtful if we have all appreciated how much it has cost to take down plant even though the same may have appeared in good condition with a fairly high salvage value but a survey of the No. 9 sheets from the branches for the month of April, which month was not particularly heavy in removal activities, indicates that the absolute loss through the removal of plant amounted to \$21,611. In addition to this item the Managers can readily appreciate the fact that it will cost an amount considerably in excess of the inventory figures to replace the footage lost. As judged by the experience

(Testimony of Mrs. Martha S. Montgomery)

of the last few months, the cost of securing a lease on an average (excluding Los Angeles) is in the neighborhood of thirty dollars. This represents only the activities of the Space Department. There, of course, must be added to this certain other overhead as well as automobile expense to get a figure which represents the total cost of obtaining the lease. In addition to the money which must be expended in obtaining the lease, there is an item which represents the first payment or advanced rental on a piece of property, so that the total amount of money expended in addition to the above in order to replace lost plant amounts to a figure somewhere between forty and fifty dollars per panel and the greatest part of this expenditure, of course, goes to expense. The branches are credited with only a conservative amount per foot to cover the actual building. Considering the entire expense which must be charged against lost plant which is replaced, it is doubtful if a panel of posting under ordinary conditions can be removed and be rebuilt without an absolute loss of thirty-five dollars and without an outlay of cash of over forty dollars considering the payment of advance rentals. The above figures are probably too low for some of the branches."

Foster and Kleiser Company's office bulletin No. 446, dated November 27, 1926, was thereupon received in evidence, read to the jury, and marked Plaintiff's Exhibit 2-O in evidence, and is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[PLAINTIFF'S EXHIBIT No. 2-O.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
#446

San Francisco, Calif. Nov. 27, 1926.

Foster and Kleiser Company

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle.
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. W. C. Brown	Long Beach
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

RE: NATIONAL BUSINESS ON COMPETITIVE
PLANTS

In order that we may take the fullest advantage of our New York Office we are asking that you kindly report to us all advertising of a National character which appears

(Testimony of Mrs. Martha S. Montgomery)

upon any plant other than our own operated in the territory under your jurisdiction. Through forwarding these reports to us promptly we will be in a position to have Mr. Everett contact the representative of the home office of the advertiser concerned and if possible arrange for the transfer of this business to us.

We believe that you will be well repaid for your effort in seeing that this information reaches us promptly.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

Assistant General Manager.

WFT:IHO

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 2-O Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 156 dated December 3, 1923, was thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-P in evidence, and is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[PLAINTIFF'S EXHIBIT No. 2-P.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 156.

San Francisco, Cal.,
DECEMBER 3, 1923.

Foster and Kleiser Company,

San Francisco,

Los Angeles,

Seattle,

Portland,

Oakland,

Tacoma,

Sacramento,

Long Beach,

Medford,

Wm. G. Fahy Co., Fresno.

Gentlemen: Re: Foster and Kleiser Company Policy
Toward Agency Members of the Outdoor Advertising Bureau.

We are attaching the policy of this company with regard to its relation toward agency members of the Outdoor Advertising Bureau as outlined and written over the signature of Mr. Walter F. Foster.

(Testimony of Mrs. Martha S. Montgomery)

You will note that all information and contact by and between the agencies and the Foster and Kleiser Company is to be through the General Office of our company in San Francisco. Should there be any question as to any of the conditions of this statement by Mr. Foster or should there be any conditions which has come up in your contact with any agency which is not covered we will greatly appreciate your courtesy in promptly placing this matter before us in order that a proper ruling may be immediately made.

Kindly be so guided.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

Ass't. General Manager

WFT*AP

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 2-P Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 368, dated October 14, 1925, was thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-Q in evidence, and is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[PLAINTIFF'S EXHIBIT No. 2-Q.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 368.

San Francisco, Calif.
OCTOBER 14, 1925.

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Geo. A. Sample	San Diego
Mr. Lyle Abrahamson	Tacoma
Mr. W. C. Brown	Long Beach
Mr. W. H. Funk	Sacramento
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford,
Mr. Grant M. Smith	Oakland.
Mr. W. F. Foster	Mr. Noble Hamilton
Mr. Geo. W. Kleiser	Mr. S. Carman
Mr. A. F. Lausen, Jr.	Miss H. M. Salin.

(Testimony of Mrs. Martha S. Montgomery)

—Mr. W. F. Thompson

Mr. R. S. Montgomery

Mr. Albert Mortenson

Mr. R. A. Edwards

Mr. R. W. Olmsted

Mr. G. B. Haynes

Mr. A. W. Zamloch

Mr. E. R. Everett, New York Office.

Gentlemen: Re: Sales Letter #18 – Cancellable Post-
ing Orders.

May we refer you to Sales Letter #18 written under date of September 24, 1925 over the signature of Mr. R. S. Montgomery, General Sales Manager.

The policy of 120 days cancellable period as a minimum on cancellable orders has been adopted by the General Outdoor Advertising Co., and covers the acceptance of business through its salesmen and through the National Outdoor Advertising Bureau whose business is cleared through the General Outdoor Advertising Co.

Sales Letter #18 refers primarily to our contacts with agency members of the Bureau and with accounts which will be cleared through the Bureau in order that the statements and representations of our salesmen will be the same as the stated policy of the source through which the business will come to us.

(Testimony of Mrs. Martha S. Montgomery)

There will be, however, exceptions to this stated policy even on orders received by us through the General Outdoor Advertising Co., where it would appear to them the part of wisdom to make such an exception. The purpose of this statement is that while it is to our advantage to do everything possible to make the 120 day minimum for cancellable orders universally accepted yet on business local to Foster and Kleiser Company good horse sense should rule and an occasional merited exception will perhaps save for us business which might otherwise be driven from our plants.

Let us make every effort consistent with good sensible business practice to fill up all our open posting space.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

WFT*AP

Ass't. General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 2-Q Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 439, dated October 8, 1926, was thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-R in evidence, and is in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[PLAINTIFF'S EXHIBIT No. 2-R.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN

#439

San Francisco, Calif. October 8, 1926

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Lyle Abrahamson	Tacoma
Mr. Geo. A. Sample	San Diego
Mr. W. H. Funk	Sacramento
Mr. W. C. Brown	Long Beach
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

Gentlemen: RE: COOPERATIVE CONTACT AC-
COUNTS CLEARED THROUGH
GENERAL OUTDOOR ADVER-
TISING COMPANY

For some little time we have been in correspondence with the New York Office of the General Outdoor Advertising Company on the subject of cooperative sales ac-

(Testimony of Mrs. Martha S. Montgomery)

tivity in connection with orders received through their New York and Chicago Offices for execution on the plants of our company.

We are today in receipt of a letter from Mr. Everett of our New York Office with which is enclosed a letter from the General Outdoor Advertising Company of New York dated September 30, 1926 signed by Mr. W. D. Frey, outlining their plan of having their cooperative salesmen contact with local representatives of National advertisers not to exceed thirty days prior to the actual posting date of the different contracts and suggesting that we follow the same course on accounts that are cleared to us through the General Outdoor Advertising Company.

The General Outdoor Advertising Company's plan follows:

"The plan which we have now lined up is one which will call for contacting with the local representatives of national advertisers about thirty days prior to actual starting date of various contracts, and I believe that if your cooperative men work along the same lines that we will all be co-ordinating our activity in this respect. I am sure that by handling the matter in this way that there will be no objection to it as there was in the past through contracting immediately after the receipt of the orders by your branches."

(Testimony of Mrs. Martha S. Montgomery)

As you know, we discontinued contacting Western representatives of accounts whose orders were cleared to us through the General Outdoor Advertising Company some time ago due to complaints of these advertisers transmitted to us through the General Outdoor Advertising Company. It will now be in order for us to re-

Page 2

#439

October 8, 1926

sume this very valuable cooperative work with the understanding that our contact and the giving out of the information regarding orders received by us is not made and given prior to thirty days in advance of the actual posting date.

Kindly acknowledge receipt of this bulletin in order that we may know that its purpose is understood.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

WFT/EB

Assistant General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 2-R Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Foster & Kleiser Company's office bulletin No. 353, dated August 7, 1925, together with copies of three letters attached thereto, were thereupon received in evidence, read to the jury and marked Plaintiff's Exhibit 2-S in evidence, and are in words and figures as follows, to-wit:

(Testimony of Mrs. Martha S. Montgomery)

[PLAINTIFF'S EXHIBIT No. 2-S.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 353

San Francisco, Cal.,
August 7, 1925

Foster and Kleiser Company

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Geo. A. Sample	San Diego
Mr. Lyle Abrahamson	Tacoma
Mr. W. C. Brown	Long Beach
Mr. W. H. Funk	Sacramento
√Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

Gentlemen: Subject: Service R. J. Reynolds Tobacco
Company

Attached hereto you will find copy of a letter under date of July 22nd from the General Outdoor Advertising Company signed by Mr. K. H. Fulton, President, ad-

(Testimony of Mrs. Martha S. Montgomery)

dressed to your branch, together with copy of a letter under date of July 24th signed by Mr. W. D. Frey, Manager of the National Service Division of the General Outdoor Advertising Company, addressed to the writer, and a copy of our reply to Mr. Frey under today's date.

Please make a survey of the R. J. Reynolds' display immediately and secure reapproval of it from the local representative of the R. J. Reynolds Tobacco Company. We would suggest that you list the entire display in triplicate and have the local representative approve over his signature each list. The lists should be in the same form as those which accompany the invoices. Retain one set for your files and send one to the General Outdoor Advertising Company, 550 West 57th Street, New York City, attention Mr. W. D. Frey, Manager National Service Division, accompanied by a letter signed by you as Branch Maanger, stating that in accordance with Mr. Frey's letter of July 24th, addressed to the writer, copy of which was sent you, you have had this survey made and that it has been approved by Mr., representing the R. J. Reynolds Tobacco Company, as per lists attached; send the third set of lists to the General Office, San Francisco, attention of the writer, attached to a copy of your letter to Mr. Frey.

As Mr. Fulton has so pointedly stated in his letter of July 22nd, this account as a whole throughout the country is in jeopardy – a mighty serious state of affairs. However, we are depending upon each of our Branch Managers to show that he is absolutely in the clear and that the Reynolds Tobacco Company displays in his territory are intact and have the absolute approval of the local

(Testimony of Mrs. Martha S. Montgomery)

Bulletin No. 353

Page 2

representative of the R. J. Reynolds Tobacco Company.

This letter from Mr. Fulton, following as it does our experience with the Los Angeles Soap Company, about which we have written Bulletin No. 351, is a shock that cannot help but awaken every one in our organization to the fact that the advertisers are demanding the service which we have contracted to deliver, and that they will no longer tolerate inefficiency, carelessness or negligence on our part.

We must insist that each Branch Manager give this matter his personal attention, and that it be attended to at once so that both the General Outdoor Advertising Company and the General Office may be assured that the service being rendered to the R. J. Reynolds Tobacco Company throughout our entire territory is up to the minute and entirely satisfactory to the representatives of the R. J. Reynolds Tobacco Company.

Awaiting your very prompt reply and report, we are

Yours very truly,

FOSTER AND KLEISER COMPANY

A. F. Lausen, Jr.

A. F. Lausen, Jr.

General Manager

(Testimony of Mrs. Martha S. Montgomery)

Bulletin 353

COPY

Page 3

GENERAL OUTDOOR ADVERTISING CO.

New York City

July 22, 1925

Foster and Kleiser Co.,
Eddy St. at Pierce
San Francisco, Cal.

Dear Sir:

So grave a situation has arisen over the continued displacement of Camel panels that continuance of outdoor advertising by R. J. Reynolds Tobacco Company is being jeopardized.

Not only have some plant owners taken away from the Camel showing some of their choicest panels in favor of other advertisers – but have actually given these locations to competitors.

If this situation is not immediately remedied plant owners themselves may arbitrarily wipe outdoor advertising off this client's books.

Those who have allowed themselves for some reason or other to be so unfair to this advertiser must in decency – not only to R. J. Reynolds Tobacco Company but to

(Testimony of Mrs. Martha S. Montgomery)

outdoor advertising as a medium as well – immediately replace all Camel panels that have been taken away from them without approval and given to other advertisers.

After this has been done, please get in touch with R. J. Reynolds Tobacco Company representative and see that he is satisfied with the Camel showing and that it is as good as any other advertiser's showing on your plant.

It passes comprehension why a great and consistent supporter of our national medium –for years a twelve-months advertiser – should be subjected to such unfair treatment. No other advertiser is entitled to a better showing; no other advertiser could deserve better treatment on any plant.

This letter is sent all plant owners. Those not at fault will understand there is no reflection intended.

To those who have displaced Camel panels we must insist that these showings are immediately and fully restored – and that this client receives the same relatively good treatment on every plant that any other advertiser is given. Also, that no changes are made in the future without the consent of R. J. Reynolds Tobacco Company representative.

Yours very truly,

K. H. Fulton (Signed)
President

(Testimony of Mrs. Martha S. Montgomery)

Bulletin No. 353

Page 4

C O P Y

GENERAL OUTDOOR ADVERTISING CO.

New York, N. Y.

July 24, 1925

Mr. A. F. Lausen, Jr.
Foster and Kleiser Company
Eddy Street at Pierce
San Francisco, California

Dear Gus:

You will find enclosed letters addressed to your various branches with reference to dissatisfaction on the part of the R. J. Reynolds Tobacco Company with the manner in which plant owners have arbitrarily made changes in their showing after the showing had been originally agreed upon between the plant owner and their representative.

While this may not apply to you, nevertheless there are many cases where it does apply and for this reason this

(Testimony of Mrs. Martha S. Montgomery)

letter has been sent to all plant owners. My thought in sending all the letters to your branches to you is because I thought you might want to write all of your branches asking them to make a survey of the Reynolds display as agreed upon between your local branch manager and the Reynolds representative and, if the display is intact as agreed upon, write me to that effect, and in cases where any changes were not approved, please secure the approval of the Reynolds representative and write us regarding same.

We intend to follow this matter through for reply from all plants and will, therefore, appreciate it if you will follow the matter through on this basis.

With kind personal regards, I am

Very truly yours,

(Signed) W. D. Frey

Manager, National Service Division

(Testimony of Mrs. Martha S. Montgomery)

Bulletin No. 353

Page 5

C O P Y

AIRMAIL

San Francisco, Calif.

August 7, 1925

General Outdoor Advertising Company,
550 West 57th Street
New York City

Attention Mr. W. D. Frey, Manager
National Service Division

Dear Bill:--

Upon my return to San Francisco after an inspection trip through Southern California I found your letter of July 24th (it was held for my return) enclosing Mr. Fulton's letter of July 22nd, addressed to each of our branches, with reference to the R. J. Reynolds Tobacco Company's display.

I am glad you sent these letters to me instead of to the branches direct; while I am confident that the Camel displays throughout our entire territory are just as they have been approved of by the local representatives, nevertheless

(Testimony of Mrs. Martha S. Montgomery)

it gives me a very excellent opportunity to again impress upon our entire organization the great necessity and importance of protecting the interests of the R. J. Reynolds Tobacco Company as well as the interests of all other advertisers using the medium.

Of course you understand that because of the usual loss of locations it is necessary to provide new locations, but the approval of these new locations is always secured from the local representative of the R. J. Reynolds Tobacco Company.

Each Branch Manager will have a survey made of the Reynolds displays and will write you that the said displays have the full approval of the local representative of the Reynolds Tobacco Company.

Hoping that the cause which compelled Mr. Fulton to write his letter of July 22nd to all the plant owners throughout the United States will be remedied forthwith and forever, we are with kind personal regards

Yours very truly,

FOSTER AND KLEISER COMPANY

(Signed) A. F. Lausen, Jr.

General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 2-S Filed 1/10 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Mrs. Martha S. Montgomery)

Said exhibit was thereupon read to the jury.

MR. GLENSOR: I offer in evidence, for the limited purpose of tolling the statute of limitations, under instructions to be hereafter given, a certified copy of the original petition of the United States filed in the District Court of the United States for the Southern District of New York in the case of United States of America v. General Outdoor Advertising Company and others.

MR. CLARK: To which the defendant, Foster & Kleiser Company, objects on the ground that it is irrelevant and *res inter alios acta*, and not the way to prove the period of time during which that case was pending.

THE COURT: You better make your complete offer.

MR. GLENSOR: That one is complete, as far as that paper is concerned.

THE COURT: You have offered what, the record?

MR. GLENSOR: I have offered a certified copy of the original complaint.

THE COURT: All right, what next?

MR. GLENSOR: I offer in evidence a certified copy of the final decree entered in that case on the 7th day of May, 1929.

THE COURT: The same objection to that?

MR. CLARK: The same objection, and for the same reasons, with the further statement that there is no theory, under the statute or otherwise, which permits the admission of the decree for the purpose stated by counsel.

(Testimony of Mrs. Martha S. Montgomery)

THE COURT: Then, your further offer?

MR. GLENSOR: My further offer is a copy of the, or rather, the original record, which will be produced, it is not here now, in the case pending in this court for the same purpose, the complaint in the case of United States of America vs. Foster & Kleiser Company.

The Court: I suggest that you number that, if you have the number.

MR. GLENSOR: Yes, I will get the number, your Honor. It is Equity Case No. R-31-M.

The Court: Very well, together with the decree?

MR. GLENSOR: And the decree.

MR. CLARK: Well, I urge my objection against both of them together, they are both offered at one time?

MR. GLENSOR: Yes.

MR. CLARK: I object to them severally, to each of them severally, and to both of them, on the grounds I stated in my objection to the complaint in the G. O. A. case, that the matter is irrelevant and *res inter alios acta*, and on the further ground the introduction of it is precluded expressly by the language of the statute, and on the further ground it is not necessary, not the proper method of proving the period during which that action was pending; that is a matter the court takes judicial knowledge of. And I would like to add to my objection to the first and to the third items that the only possible effect the decree can have in that case, G. O. A. case, the only possible effect the complaint and the decree in that case can have is to prejudice the rights of the defendant, without having any advantage to the plaintiff at all, except as prejudicing the rights of the defendant.

(Testimony of Mrs. Martha S. Montgomery)

MR. STERRY: May I add to that objection, on the ground it is not competent or relevant for the reason any matters which he seeks to prove are matters within the knowledge or within the judicial notice of this court, and the court can take judicial notice of its own record, and therefore the offer is not in good faith, but in order to get matters which are highly incompetent and prejudicial to the rights of the defendants, before the jury.

THE COURT: Objections overruled.

MR. CLARK: Exception.

MR. STERRY: Exception.

MR. CLARK: I suppose each objection is overruled?

THE COURT: Yes.

MR. CLARK: And the record may show any exception to each ruling?

THE COURT: Yes, a separate exception to each ruling.

To which ruling of the court, and each of them, as to the admissibility of each and every one of the documents so offered by plaintiff, defendants, and each of them, duly and regularly excepted, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 209.

The certified copy of the original petition in the case of United States of America v. General Outdoor Advertising Company was thereupon received in evidence and marked Plaintiff's Exhibit 218.

Said plaintiff's Exhibit 218 is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 218.]

Due service of a copy of the within petition is hereby acknowledged. Dated New York, N. Y. July 23, 1928. Howe & Hurd Attys for General Outdoor Advertising Co., Inc.; Kerwin H. Fulton, George L. Johnson, George Armsby, individually and as Voting Trustees; E. Allen Scott Atty for Outdoor Advertising Association of America, Inc. D. D. Wein and E. F. Colladay, Attys for National Outdoor Advertising Bureau, Inc.

In Equity, No. E46-50

In the District Court of the United States in and for the Southern District of New York

United States of America, petitioner

v.

General Outdoor Advertising Company, Inc., National Outdoor Advertising Bureau, Inc., Outdoor Advertising Association of America, Inc., Foster and Kleiser Company, Foster and Kleiser Investment Company, Kerwin H. Fulton, George Johnson, George Armsby, Individually and as Voting Trustees, and George W. Kleiser, defendants

PETITION

CHARLES H. TUTTLE,
United States Attorney.

JOHN G. SARGENT,
Attorney General.

WILLIAM J. DONOVAN,
Assistant to the Attorney General.

RUSH H. WILLIAMSON,
HORACE R. LAMB,
Special Assistants to the Attorney General.

[Stamped on face]: U. S. District Court So Dist N. Y.
Filed Jul 23 1928

In the District Court of the United States in and for
the Southern District of New York

—
In Equity, No. —

United States of America, petitioner,

v.

General Outdoor Advertising Company, Inc., National
Outdoor Advertising Bureau, Inc., Outdoor Advertis-
ing Association of America, Inc., Foster and Kleiser
Company, Foster and Kleiser Investment Company,
Kerwin H. Fulton, George Johnson, George Armsby,
Individually and as Voting Trustees, and George W.
Kleiser, defendants.

—
To the Honorable Judges of the District Court of the
United States for the Southern District of New
York, sitting in equity:

I

THE PARTIES

The petitioner, United States of America, by its attorney for the Southern District of New York, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against:

The General Outdoor Advertising Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey (hereinafter sometimes referred to as the "General Company"), and having an office at No. 1 Park Avenue, New York, N. Y.

The National Outdoor Advertising Bureau, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York (hereinafter sometimes referred to as the "Bureau"), and having its principal office at No. 1 Park Avenue, New York, N. Y.

The Outdoor Advertising Association of America, Inc., a membership corporation organized and existing under and by virtue of the laws of the State of New York (hereinafter sometimes referred to as the "Association"), and having its principal office at No. 307 South Green Street, Chicago, Illinois.

Foster and Kleiser Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and having its principal office at No. 1675 Eddy Street, San Francisco, California.

Foster and Kleiser Investment Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal office at No. 1675 Eddy Street, San Francisco, California.

Kerwin H. Fulton, a citizen and resident of the State of New York, having his office at No. 1 Park Avenue, in the City of New York.

George A. Johnson, a citizen and resident of the State of New York, having his office at No. 1 Park Avenue, in the City of New York.

George Armsby, a citizen and resident of the State of New York, having his office at No. 24 Broad Street, in the City of New York.

George W. Kleiser, a citizen and resident of the State of California, having his office at No. 1675 Eddy Street, San Francisco, California.

and for its cause of action alleges on information and belief:

II

THE PURPOSE OF THE PETITION

This proceeding is brought under the provisions of Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" (26 Stat. 209), known as the "Sherman Antitrust Act," and Section 15 of the Act of Congress of October 15, 1914 (38 Stat. 730), as amended May 15, 1916, and May 26, 1920, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," known as the "Clayton Act," (1) to prevent and restrain all the defendants from further engaging in this district, and elsewhere in the United States, in violation of the provisions of Sections 1 and 2 of the said Act of Congress of July 2, 1890, and (2) to prevent and restrain the

defendant George W. Kleiser from violating the provisions of Section 8 of the said Act of Congress of October 15, 1914, as amended, all in the manner and by the means hereinafter alleged.

III

JURISDICTION AND DESCRIPTION OF THE COMMERCE RESTRAINED

The defendants herein are carrying on in this district and elsewhere in the United States a combination and conspiracy in restraint of interstate trade and commerce, and are monopolizing and attempting to monopolize such trade and commerce in the business of national outdoor advertising. This commerce includes two principal classes of activities: (1) the solicitation of contracts for national advertising, and (2) the operation of advertising display plants.

The solicitation of national outdoor advertising contracts involves (a) the preparation and submission to advertisers of advertising copy or designs for reproduction, either in print or in paint, on signboards, walls, or panels constructed for that purpose; (b) the procurement from lithographers and the submission to advertisers of estimates covering the cost of printing posters; (c) the procurement, primarily through the Association, from poster-plant and paint-plant operators, of statistical information concerning the location of poster-plants and paint-plants in the various towns and cities throughout the United States, as well as the charges for displays thereon, and the submission to prospective advertisers of estimates of the cost of displaying advertising matter on such plants;

(d) entering into contracts, either as principal or as agent for the advertisers, for the purchase of advertising posters pursuant to the copy or designs approved by the advertisers, and the subsequent transportation and delivery of the same in interstate commerce from the lithographer to the operators of poster-plants located in cities, towns and villages throughout the United States for posting on such poster-plants in accordance with the instructions of the advertiser; (e) causing the approved copy or designs for painted signs to be transported in interstate commerce from the office or studio of the solicitor to operators of paint-plants in the various cities and towns throughout the United States for reproduction on such paint-plants, in accordance with the advertisers' directions; (f) entering into contracts, either as principal or as agent for the advertisers, with operators of poster-plants and paint-plants, for the display of poster and painted advertising matter, which has been transported in interstate commerce, in accordance with the advertisers' instructions; (g) checking and inspecting the displays of advertising matter on the poster and paint-plants which have been selected by the advertisers or by the solicitors on their behalf; (h) making payment to the operators of the poster-plants and paint-plants for the use of their plants; and (i) finally collecting from the advertisers for all services rendered. Persons who solicit outdoor-advertising contracts and perform the activities outlined above are said to be engaged in operating an outdoor-advertising agency.

The operation of outdoor advertising display-plants includes the maintenance of two kinds of plants, (1) a poster-plant and (2) a paint-plant. A poster-plant con-

sists of a system of billboards or poster-panels (whether built as separate structures or attached to building-walls, fences, or other structures) under common ownership and used for the purpose of exhibiting thereon outdoor advertising posters or lithographs, which are transported in interstate commerce. The poster-boards or panels which are illuminated at night by electricity are called "specials." Non-illuminated boards or panels are called "regulars." For the purpose of contracting for advertising displays the poster-boards and panels are arranged in groups of substantially an equal number of "regulars" and "specials" distributed throughout a particular city, town, or village, designated a "showing." A "showing" is intended to provide an outdoor advertising display in substantially all places available in a particular city, town, or village for that purpose having advertising value. "Showings" are subdivided into "full", "half," or "quarter showings," depending upon whether the advertiser contracts for a display on all of the panels of a particular group of panels or a half or quarter thereof. A paint-plant consists of a system of one or more signboards, panels, or bulletin-boards (whether built as separate structures or attached to building-walls, fences, or other structures) under common ownership and used for the purpose of painting thereon designs or copy for outdoor advertising matter, which are transported in interstate commerce. Each separate board or panel is usually located at some conspicuous point near a public highway on which a large volume of traffic is continually passing. Frequently these painted boards or panels are illuminated at night. Usually contracts for painted displays are made for each separate board or panel.

The paper posters or lithographs and the designs or copy for painted advertising displays which are transported in interstate commerce are intended to, and do, convey information concerning the goods, wares, and merchandise of the advertiser to prospective buyers in all parts of the country; and the contracts entered into by advertisers and advertising agencies with plant operators engaged in national outdoor advertising are made for the purpose of having the information contained in such posters and designs transported in interstate commerce to the display-plants located in states other than that in which the advertiser, the advertising agency, or the manufacturer of the lithographs is located.

IV

DEFENDANTS' RELATION TO THE INTER-STATE COMMERCE WHICH IS AND HAS BEEN RESTRAINED AND MONOPOLIZED

The General Outdoor Advertising Company, Inc., is engaged in both the solicitation of national outdoor advertising and the operation of poster-plants and paint-plants. It maintains offices in the cities of New York, Chicago, Philadelphia, Cleveland, Detroit, Cincinnati, St. Louis, Kansas City, Minneapolis, Omaha, San Francisco, and other important cities throughout the United States. It operates poster and paint-plants in substantially all the larger cities, towns, and villages east of the Rocky Mountains. It is by far the largest single operator of display-plants in the United States, owning approximately 1,500 separate display-plants, located in at least twenty-three States and the District of Columbia. The poster and paint-plants which the General Company operates in the

larger cities and towns of the United States, commonly designated "key cities," are so essential to an advertiser desiring to contract for a national outdoor advertising campaign that it would be impossible for an advertiser to conduct such a campaign without contracting for these plants. The General Company, through the combination hereinafter alleged, controls approximately 80 per cent of the total national outdoor advertising business transacted in the United States.

Foster and Kleiser Company is also engaged in both the solicitation of national outdoor advertising and the operation of poster-plants and paint-plants. It maintains an office for the solicitation of contracts in San Francisco, California, and New York City, New York. It operates poster-plants and paint-plants in the States of Washington, Oregon, California, and Arizona.

Foster and Kleiser Investment Company is a personal investment holding corporation for defendant George W. Kleiser and one Walter F. Foster, each of whom owns one-half of its issued capital stock. Defendant George W. Kleiser and Mr. Walter F. Kleiser each own 54,342 shares and, together with the members of their respective families, own 416,490 shares, of a total of 588,945 shares of defendant Foster and Kleiser Company. Defendant Foster and Kleiser Investment Company owns 50,000 shares of common stock of defendant General Outdoor Advertising Company, Inc., which it acquired by the means and for the purposes hereinafter more fully alleged.

The National Outdoor Advertising Bureau, Inc., is engaged in the business of aiding and assisting its stockholders and others employing its services in soliciting and executing contracts for national outdoor advertising. The

stockholders of the Bureau, called "Bureau members," are engaged in conducting general advertising agencies, the activities of which include periodical advertising, as well as outdoor advertising. That part of the business of these stockholders and others employing the services of the Bureau which relates to outdoor advertising is under the direction and supervision of the Bureau, which maintains offices both in the City of New York, and in Chicago, Illinois. The "members" of the Bureau constitute practically all of the large general advertising agencies in the United States and have offices in all of the larger cities and towns throughout the country.

The Outdoor Advertising Association of America is a membership corporation, the members of which are divided into two classes: (1) the owners and operators of poster-plants, and (2) owners and operators of paint-plants. The memberships in the Association are designated by separate display-plants, located in separate cities, towns, and villages throughout the United States. There is only one membership for each separate city, town, or village. Voting in the affairs of the Association is according to the number of separate display-plants owned or operated by the voting member. There are 15,435 memberships representing poster-plants, and 207 memberships representing paint-plants. The two largest owners of memberships are (1) the defendant General Outdoor Advertising Company, Inc., which has 980 memberships, representing poster-plants which it owns and operates, and 89 memberships, representing paint-plants which it owns and operates, and (2) the defendant Foster and Kleiser Company, which has 576 memberships representing poster-plants which it owns and operates.

The Association functions under the dominance and control of these two defendants, especially the General Company, frequently to the prejudice or injury of other plant-owners who are endeavoring to conduct their business in competition with the General Company, as follows: The Association undertakes to compile statistical information concerning the number and location of the poster and paint-plants operated by its members, the number of panels constituting a "showing", and the charges for a "showing" of outdoor advertising matter on the members' plants. This statistical information is furnished national outdoor advertising solicitors on payment of fixed fees, and frequently only on compliance with unreasonable and arbitrary conditions imposed by the Association. The furnishing of this statistical information to such solicitors constitutes practically the sole means by which plant-owners, members of the Association, other than the General Outdoor Advertising Company, Inc., and Foster and Kleiser Company, may obtain contracts for the display of national outdoor advertising matter on their plants. Conversely, the statistical information obtained by national outdoor advertising solicitors from the Association furnishes practically the only means by which solicitors, other than the General Outdoor Advertising Company, Inc. and Foster and Kleiser Company, may obtain knowledge of the existence of poster-plant and paint-plant operators, with whom contracts for the display of national outdoor advertising matter may be made, and which knowledge is essential to the conduct of the solicitors' business.

In accepting statistical information from members to be furnished solicitors, the Association frequently undertakes to, and does, impose unreasonable, arbitrary, and

illegal restrictions, especially with reference to changes in allotments of the number of poster-panels constituting a "showing" on a member's poster-plant. In addition, the Association imposes unreasonable, arbitrary, and illegal conditions for membership, and delays taking action on applications for membership where the applicant operates a display-plant in competition with a member of the Association, in order to secure for existing members a monopoly of the outdoor advertising displays in the particular city, town, or village in which such member operates, and thus illegally prevents such applicant from obtaining contracts for national outdoor advertising displays through the facilities provided by the Association.

Kerwin H. Fulton is a director as well as the president and general manager of the General Company. He is also a director and member of the Executive Committee of the Association.

George A. Johnson is a director and chairman of the Board of the General Company. Prior to the formation of the General Outdoor Advertising Company he was vice-president of the Thomas Cusack Company, to which company reference is hereinafter made.

George Armsby is a director of the General Outdoor Advertising Company.

Defendants Fulton, Johnson, and Armsby constituted the Committee in charge of the Plan, hereinafter referred to, for the organization of the General Company.

Defendants Fulton, Johnson, and Armsby are also the voting trustees under a Voting Trust Agreement, dated as of February 26, 1925, hereinafter referred to, pursuant to the terms of which all of the issued common

stock of the General Outdoor Advertising Company is held and voted by them.

George Kleiser is a director as well as president of both the Foster and Kleiser Company and the Foster and Kleiser Investment Company. He is also a director of the General Outdoor Advertising Company, Inc., having been elected to such office by the means and for the purposes hereinafter more fully alleged.

V

THE UNLAWFUL MONOPOLY

A

FORMATION OF GENERAL ADVERTISING COMPANY, INC.

Prior to 1925 there were two principal groups of companies in the United States (exclusive of the Foster and Kleiser Company) engaged in soliciting national outdoor advertising and operating large poster-plants and paint-plants. These were (1) the so-called Thomas Cusack group, and (2) the so-called Fulton group.

(1) The Cusack Group

The principal company in the Cusack group was the Thomas Cusack Company, incorporated in 1903 under the laws of the state of New Jersey. Originally this company was engaged only in the operation of painted display advertising. In about 1908, however, this company acquired the poster-plants of the so-called Gunning System, which operated not only painted display advertising boards, but also operated poster-plants in the city of Chicago and

elsewhere, notably in Omaha, Nebraska, and Oklahoma City, Oklahoma. The Cusack Company gradually extended its ownership of both paint and poster-plants until during the period from 1918 to 1920 it attained such a dominant position in the advertising industry in the United States that it endeavored to control both the Association (in which it then had the largest number of memberships by reason of its extensive ownership of poster-plants and paint-plants) and the solicitors engaged in obtaining contracts for national advertising. In order to make its monopoly effective, in 1920 the Cusack Company refused to accept contracts for national outdoor advertising matter to be displayed on its plants unless the contracts for such advertising were placed directly with it and without the intervention of competing solicitors. The Cusack Company and its subsidiary companies conducted soliciting offices and operated poster-plants in many of the principal cities of the United States, including New York City, Chicago, St. Louis, Kansas City, Omaha, Denver, New Orleans, Indianapolis, St. Joseph, Philadelphia, Buffalo, Rochester, Cleveland, Toledo, Dayton, Baltimore, Washington, D. C., Hartford, Memphis, Pittsburgh, Akron, Davenport, Duluth, Nashville, Youngstown, and Jacksonville, Florida. It also operated poster-plants and paint-plants in about 100 smaller cities throughout the United States. The subsidiary companies owned or controlled by the Cusack Company, constituting the Cusack group of companies, at the date of the formation of the General Outdoor Advertising Company, were as follows:

Name of company	State of incorporation
American Sign Co.....	Delaware.
American Posting Service.....	Illinois.
A. & W. Electric Sign Co.....	Ohio.
Atlanta Advertising Service.....	Georgia.
Aurora Bill Posting Co.....	Illinois.
Baltimore Poster Advertising Co.....	Delaware.

Name of company	State of incorporation
Block-Rogers Advertising Co.....	Maine.
The Bryan Co.....	Ohio.
W. E. Bryan Company.....	Indiana.
The Buchholz Co.....	Massachusetts.
The Carnegie Twelfth Company.....	Ohio.
Council Bluffs Poster Advertising Co.....	Iowa.
The Curran Billposting & Distributing Co....	Colorado.
Garlick Poster Advertising Co.....	Louisiana.
Hartford Poster Advertising Co.....	Connecticut.
Indianapolis Billposting Co.....	Indiana.
Joliet Bill Posting Co.....	Illinois.
Kale & Bryan Co.....	Indiana.
Massengale Bulletin System.....	Georgia.
Morrison Posting Service.....	Illinois.
Mott, Jr., Bulletin System.....	Florida.
Northern Display Advertising Co.....	Minnesota.
North Shore Advertising Co.....	Illinois.
Thos. Cusack Co.—Oklahoma.....	Oklahoma.
Omaha Posting Service.....	Nebraska.
Philadelphia Posting Advertising Co.....	New Jersey.
Poster Display Company.....	Pennsylvania.

S. H. Robinson Company.....	Pennsylvania.
Russell Posting Service.....	Illinois.
Southern Advertising Co.....	Alabama.
South Shore Advertising Co.....	Indiana.
Tagney & Hudson Co.....	Illinois.
U. S. Display Advertising Co.....	Minnesota.
Western Bill Posting Co.....	Illinois.

In addition to the soliciting and display facilities owned and operated directly by the Cusack Company or a subsidiary thereof, there was in existence a contractual arrangement between the Cusack Company and the Bureau (hereinafter more fully referred to) whereby the Cusack Company executed all of the contracts for national outdoor advertising obtained by the members of the Bureau.

As a result of the ownership and control of poster-plants and paint-plants, together with the contractual arrangement with the Bureau, in 1924 the Cusack group of companies constituted the largest outdoor advertising business in the world, transacting approximately 50 per cent of the total national outdoor advertising business of the entire United States.

(2) The Fulton Group

The original company in the so-called Fulton group was the Poster Advertising Company, Inc., organized under the laws of New York in 1917. Kerwin H. Fulton became the president of the Company shortly after its organization. This company was engaged solely in the business of soliciting national outdoor advertising. Associated with the Poster Advertising Company, Inc., was a group of companies, under the control of Kerwin H. Fulton,

either individually or as one of the executors of the Barney Link Estate, engaged in the operation of paint and poster-plants in various towns and cities chiefly in the Eastern part of the United States. Prior to the year 1920, in those cities and towns where the group of companies associated with the Poster Company did not operate poster or paint-plants, a large part of the contracts for national outdoor advertising obtained by the Poster Advertising Company, Inc., were executed on the poster and paint-plants operated by the Thomas Cusack Company and its subsidiaries. In 1920, with the refusal of the Cusack Company to accept further contracts for execution on its plants, which contracts had not been obtained by its own solicitors, or through its contract with the National Outdoor Advertising Bureau, Inc., the Poster Advertising Company, Inc., was unable to have its contracts for national advertising fully executed, unless it would submit to the domination of the industry by the Cusack Company and enter into contracts for the display of outdoor advertising matter through the agencies controlled by the Cusack Company. Other large solicitors for national outdoor advertising were in the same situation. Under the leadership of the Poster Company, defendant Fulton and others associated with him then began the development of a competing group of companies engaged in operating poster-plants and paint-plants, which companies, together with the companies then under the control of defendant Fulton, as aforesaid, known collectively as the Fulton group of companies, constituted the only companies in the outdoor advertising industry which were capable of competing with the group of companies controlled by the Cusack Company. The development

of the Fulton and associated companies continued under the direction and with the support of defendant Fulton, the Poster Advertising Company, Inc., and others, until in 1924 there were some 20 companies hereinafter named, actively engaged in operating poster-plants and paint-plants in competition with the so-called Cusack Companies, as well as elsewhere.

By reason of the strong position of the Fulton group of companies, particularly the Poster Advertising Company and others associated with it, this group of companies continued to prosper notwithstanding the attempted monopoly of the industry by the Cusack Company, until in 1924 it was transacting a substantial portion of the total national outdoor advertising business. The companies constituting the Fulton group of companies, at the date of the formation of the General Outdoor Advertising Company, were as follows:

Name of company	State of incorporation
Atlantic City Poster Advertising Company	New Jersey.
Binghamton Poster Advertising Company	New York.
Briel Poster Advertising Co., Inc.	New York.
Brooklyn Poster Advertising Company	New York.
The Burton System, Inc.	Virginia.
Capitol City Poster Advertising Co., Inc.	Connecticut.
Dixie Poster Advertising Co., Inc.	Virginia.
East St. Louis Posting Co.	Illinois.
The O. J. Gude Co., of New York	New York.
Jamaica Poster Advertising Co., Inc.	New York.
Long Island Poster Advertising Co., Inc.	New York.
Mohawk Valley Poster Advertising Co., Inc.	New York.

Old Colony Poster Advertising Co.....	
Pittsburgh Poster Advertising Co.....	Pennsylvania.
Poster Advertising Co., Inc.....	New York.
Quaker City Poster Advertising Co.....	Pennsylvania.
Ripley Poster Advertising Co.....	Georgia.
St. Louis Poster Advertising Co.....	New York.
Standard Poster Advertising Co.....	New York.
Van Buren & New York Bill Posting Company.....	New York.

(3) Merger of 1925

Toward the end of 1924 the attempted monopoly by the Cusack Company having been unsuccessful and the Fulton group of companies, under the leadership of the Poster Advertising Company, having become a formidable competitor in the industry, negotiations were commenced by defendant George L. Johnson, then a vice-president of the Cusack Company, with defendant Fulton, through the intervention of Blair & Company, Bankers of New York, for the merger and consolidation of the businesses and properties of the Cusack and Fulton Companies. As a result of these negotiations there was promulgated under the direction of defendants Johnson, Fulton, and Armsby (representing Blair & Co., Inc.) as a committee, a plan and agreement, dated January 23, 1925, for the merger of the Cusack and Fulton Companies, as well as a number of other companies, not then included in either group. In March of 1925 the plan was declared operative, resulting in the formation of General Outdoor Advertising Company, Inc. (incorporated under the laws of New Jersey, February 7, 1925), which acquired and succeeded to all

the properties, businesses and good will of the former Cusack and Fulton groups of companies, the names of which have been stated herein above.

Subsequent to declaring the plan operative, and which resulted in the formation of General Outdoor Advertising Company, Inc., as herein alleged, this corporation was merged and consolidated with (1) Thomas Cusack Company, and (2) Atlantic City Poster Advertising Company, all being New Jersey corporations, by an agreement of consolidation and merger, dated as of December 1, 1925, although actually executed January 5, 1926. Furthermore, subsequent to declaring the plan operative, the General Company has acquired the properties, business, and good will of the following companies, as well as other companies, the names and locations of which are unknown to the petitioner.

Name of company	Location
Aultman, Inc.....	Minneapolis and St. Paul.
National Poster Co. of Denver....	Denver, Colorado.
Bolles Poster Advertising Co.....	Southern New Jersey.
Outdoor Advertising Company....	Akron, Ohio.
Dave Lodge Posting Company....	Philadelphia, Pa.
New Orleans Poster Adv. Co.....	New Orleans, La.
Jacksonville Poster Adv. Co.....	Jacksonville, Fla.
Miami Poster Advertising Co....	Dayton, Ohio.
Memphis Poster Advertising Co..	Memphis, Tennessee.
Interstate Advertising Service....	Omaha, Nebraska.
Omaha Outdoor Advertising Co..	Omaha, Nebraska.
Cedar Rapids Poster Adv. Co.....	Cedar Rapids, Iowa.
Interstate Poster Adv. Company..	Napoleon, Ohio.
Weber Poster Adv. Service, Inc.	Duluth, Minnesota.

Under the plan and agreement, dated January 23, 1925, for the merger of the Cusack and Fulton Companies to form the General Outdoor Advertising Company, Inc., as hereinbefore alleged, it was provided that the committee in charge of the said plan, consisting of defendants Johnson, Fulton, and Armsby, might by unanimous vote determine to place the common stock of the General Outdoor Advertising Company, Inc., in a voting trust, the trustees whereof should be selected by the committee, in which case voting trust certificates representing shares of such common stock would be deliverable under the plan in lieu of certificates for shares of common stock.

On the organization of the General Outdoor Advertising Company, Inc., provision was made in the certificate of incorporation for three classes of stock, namely, preferred stock, Class A stock, and common stock. Only the common stock has full voting rights. (Holders of the preferred stock and the Class A stock are not entitled to vote, except as provided by statute and except whenever the corporation is in default in the payment of dividends, as more fully provided in the certificate of incorporation.) Pursuant to the provisions of the plan and agreement, dated January 23, 1925, with respect to the common stock of the General Outdoor Advertising Company, Inc., immediately following the organization of the Company, as hereinbefore alleged, all of its common stock was issued to defendants Fulton, Johnson, and Armsby, as voting trustees under the terms of a Voting Trust Agreement, dated as of February 26, 1925, and these defendants issued their voting trust certificates, which are now outstanding in the hands of the public in lieu of certificates for shares of common stock. This Voting Trust Agree-

ment provides that it shall continue until February 26, 1930, unless sooner terminated by unanimous vote of the voting trustees. In the exercise of their power and authority as voting trustees, continuously since the organization of the defendant General Outdoor Advertising Company, Inc., defendants Fulton, Johnson, and Armsby have exercised and are now exercising all of the voting rights of the stockholders of the corporation and thus have controlled, and are now continuing to control, all of the affairs of the defendant General Outdoor Advertising Company, Inc.

B

THE RELATION BETWEEN THE GENERAL COMPANY AND THE NATIONAL BUREAU

At the time of the formation of the General Company there was in existence a contract between the Thomas Cusack Company and the National Bureau whereby all contracts for national outdoor advertising obtained by members of the Bureau were executed exclusively on the poster-plants and paint-plants of the Thomas Cusack Company and its subsidiary companies. In August, 1925, a new contract was made between the General Company and the Bureau, a true copy of which is annexed hereto, marked "Exhibit A," and made a part hereof. Under this contract, which is now in full force and effect, the Bureau was constituted the agent of the General Company to solicit contracts for national outdoor advertising to be executed upon the plants owned or operated by the General Company, and, at the option of the Bureau, to be executed upon plants not owned or operated by the General Company. The contract further provides that all ad-

vertising contracts procured or obtained by the Bureau to be performed by the General Company shall forthwith be assigned by the Bureau to the General Company. In the practical operation of this contract more than 90 per cent of all of the contracts for outdoor advertising obtained by the Bureau are assigned to the General Company.

In addition, the General Company and the Bureau have agreed in this contract not to compete in the solicitation of national advertising from specified advertisers, the names of which are appended to the contract, but which are changed from time to time by mutual agreement between the General Company and the Bureau.

With the exception of the General Company itself, the Bureau (including so-called members thereof) is the largest single agency in the United States for the solicitation of national outdoor advertising. The combined volume of business obtained by the General Company and the Bureau represents about 80 per cent of the total volume of national outdoor advertising business in the United States.

The contract between the General Company and the Bureau is now in operation and will continue for an indefinite period by virtue of the provision therein for automatic renewal until cancelled by written notice, and even on the giving of such written notice the contract shall not terminate until five years from the end of the year in which notice of a desire to terminate is given.

While the contract between the Bureau and the General Company remains in force, all of the stock of the Bureau is held by trustees under the terms of a so-called "option to Purchase Stock of National Outdoor Advertising Bureau, Inc.," a copy of which is annexed hereto, marked "Exhibit B," and made a part hereof.

C

THE RELATION BETWEEN THE GENERAL COMPANY AND THE OUTDOOR ASSOCIATION OF AMERICA, INC.

The General Company has the largest number of memberships in the Association and controls the largest number of votes in the conduct of the affairs of the Association. A large number of the officers of the Association are either officers or employees of the General Company. Kerwin H. Fulton is president of the General Company and chairman of the board of directors of the Association. Of the 27 directors of the Association, 6 are either officers or employees of the General Company. In 1926, at the instance and under the direction of the representatives of the General Company, a new constitution and set of by-laws was adopted by the Association, providing for more direct regulation of the affairs of the Association by the board of directors, the practical effect of which is to concentrate the control of the Association and its affairs in the hands of the General Outdoor Advertising Company, Inc., and its representaives.

D

THE RELATION BETWEEN THE GENERAL COMPANY AND FOSTER AND KLEISER COMPANY AND FOSTER AND KLEISER INVESTMENT COMPANY.

At the time of the formation of the General Outdoor Advertising Company, Inc., by the merger and consolidation of the so-called Cusack and Fulton Companies, as hereinbefore alleged, it was proposed by the committee in charge of the plan for the formation of the General Company that defendant Foster and Kleiser Company should be included among the companies whose business and properties were to be acquired by the General Company, and negotiations to that end were had with defendant George W. Kleiser, acting on behalf of defendant Foster and Kleiser Company. In the course of these negotiations, an appraisal was made of the physical properties, and an audit was made of the accounts of the Foster and Kleiser Company. Eventually, the committee and defendant George W. Kleiser determined that the Foster and Kleiser Company should not be actually included among the companies whose business and properties were to be acquired by the General Company, but that a community of interest should be established and maintained between the General Company and the Foster and Kleiser Company (1) by having defendant George W. Kleiser elected to the board of directors of the General Company, and (2) by having defendant Foster and Kleiser Investment Company (all of the stock of which is owner or controlled by defendant George W. Kleiser and Walter F. Foster or the members of their respective families) acquire a substantial number of the shares of stock to be issued by the General Company. Accordingly,

subsequent to the organization of the General Company, defendant George W. Kleiser was elected to the board of directors of the General Company, in violation of the provisions of Section 8 of the Clayton Act (more fully alleged hereinafter), and defendant Foster and Kleiser Investment Company agreed to purchase 50,000 shares of the common stock of the General Company. After the completion of the organization of the General Company, all of its common stock having been placed under a voting trust agreement, as hereinbefore alleged, there were issued to defendant Foster and Kleiser Investment Company voting trust certificates representing 50,000 shares of the common stock of the General Company, which voting trust certificates are now held by defendant Foster and Kleiser Investment Company. As a result of the establishment of the community of interest between the General Company and the Foster and Kleiser Company, as aforesaid, an understanding was reached between these two companies whereby substantial areas of territory were allocated in which each company would conduct the operation of its advertising display plants without competition by the other, that is to say, the Foster and Kleiser Company would conduct its business operations on the Pacific Coast and the territory west of the Rocky Mountains, and the General Company in the territory east of the Rocky Mountains, in each case without competition by the other.

All of the acts, contracts, understandings, and transactions and the combination hereinbefore alleged have been entered into and performed by these defendants with the intent and with the direct and necessary effect of restraining interstate trade and commerce in national outdoor advertising, and to monopolize and to attempt to monopolize such trade and commerce.

VII

RESULTS OF THE UNLAWFUL MONOPLY AND
ATTEMPT TO MONOPOLIZE

As a result of the combination and conspiracy to restrain interstate trade and commerce in national outdoor advertising and to monopolize and attempt to monopolize such commerce, as hereinbefore alleged, in place of the active competition heretofore existing in the industry between the Cusack and Fulton groups of companies, there is now but one organization represented by defendant General Outdoor Advertising Company, Inc., which possesses power to control the entire industry, there being no other person, firm, or corporation engaged in the industry which is comparable to the General Company in size, or which is able to engage in free and unrestricted competition with the General Company. This power of the General Company has resulted, not from normal expansion and legitimate business enterprise, but from deliberate, calculated purchases and acquisitions of competing companies and by contracts and other arrangements intending to have and having the power to control the entire industry.

By virtue of the relation between the General Company and the Association, and between the General Company and the Foster and Kleiser Company, there is effected a control of approximately 90 per cent of the total poster-plants and paint-plants in the United States, located in cities, towns, and villages having a population of 10,000 people or more.

By reason of the fact that the General Company owns and operates the largest number of display-plants in the

United States, many of which are operated without competition in the so-called "key" cities, which are essential to a national outdoor advertising campaign, solicitors and advertising agencies competing with the General Company must necessarily enter into contracts with their largest and most important competitor (the General Company) in order to obtain execution of their clients' contracts.

In addition, as hereinbefore alleged, the Bureau assigns approximately 90 per cent of the contracts obtained by its members to the General Company to be executed. As a result of the contracts received from competing solicitors, advertising agencies, and members of the Bureau, as well as from its own direct solicitation, the General Company exercises a monopolistic control over the placing of contracts with operators of display-plants for the local display of advertising matter constituting parts of national outdoor advertising campaigns. In the cities, towns, and villages where the General Company does not operate its own display-plants, the so-called independent display-plant operators therein receive from the General Company, on the average, approximately 75 per cent of their total business, about one-half of which represents contracts which are sublet by the General Company, acting for competing solicitors, advertising agencies, and Bureau members, and is not the result of direct solicitation of business by the General Company. Accordingly, the monopolization by the defendant General Company of the poster and paint display-plants in key cities throughout the country, and over display-plants generally, as hereinbefore alleged, carries with it the power to control not only the so-called independent poster and paint display-plants in all parts of the country and the interstate trade

and commerce flowing thereto, but also gives the General Company the power to interfere with and restrain competing solicitors and advertising agencies in the conduct of their business in obtaining space on display-plants for the display of outdoor advertising matter on behalf of national advertisers.

The monopolistic power of the General Company, as aforesaid, has resulted and is resulting in a substantial decline in the volume of national outdoor advertising business transacted by competitors of the General Company, engaged both in the solicitation of national outdoor advertising and in the operation of poster-plants and paint-plants, which power, if continued, will result in the total suppression of competition in the industry, and the establishment of a complete and absolute monopoly in the General Company.

VIII

USES OF THE MONOPOLISTIC POWER

The power resulting from the unlawful combination and conspiracy, hereinbefore alleged, is being used (1) to oppress and coerce competitors of defendant General Outdoor Advertising Company, Inc., and with the intent to exclude them from the business of operating competing display-plants by outbidding them and unduly interfering with their procuring leases of locations for prospective or existing poster- and/or paint-panels; (2) to intimidate advertisers by threats of discrimination in service and to induce them by unfair representations and otherwise, not to deal with competitors of the defendant General Outdoor Advertising Company, Inc.; (3) to induce advertisers not to employ the services of solicitors in com-

petition with defendant General Outdoor Advertising Company, Inc., by granting secret rebates and by entering into arrangements for the formation of an advertising agency which in fact is merely a department of the business of the advertiser, whose business is thus obtained, and which is not a bona fide independent contractor engaged in soliciting national outdoor advertising, and by making unlawful discriminations in prices and services; (4) to control the defendant Outdoor Advertising Association and require it to limit the number of members in such Association so that there shall be but one poster-plant and one paint-plant membership in each city, town, or village of the United States, thus preventing potential and actual competitors of defendant General Outdoor Advertising Company, Inc., operators of local display-plants, from making use of the facilities provided by the Association to publish to advertisers statistical data concerning such local display-plants, which publication is essential to obtain contracts for local displays of large national outdoor advertising campaigns; (5) to control the Association and require it to withhold from solicitors in competition with defendant General Outdoor Advertising Company, Inc., or make it burdensome and unduly difficult for them to obtain from the Association the statistical information concerning display-plants of members of the Association, which is essential to the conduct of the solicitors' business, thus preventing such competing solicitors from using the facilities of the Association to employ the services of the display-plants of members of the Association; (6) to delay unjustly and unreasonably the delivery to the operators of display-plants in competition with defendant General Outdoor Advertising Company,

Inc., of contracts obtained by the Bureau members, providing for the employment of display-plants of competitors of the said General Company, but which in the course of transmission to such competitors have been assigned by the Bureau to the General Company, the delay in such delivery being made for the purpose of injuring competitors and to exclude them from interstate trade and commerce in national outdoor advertising by inducing the advertiser not to contract with such competitors; (7) to maintain prices at arbitrary levels and to enhance many of the prices charged for the use by advertisers of poster and/or display-plants above the prices charged for the use of such plants prior to their acquisition by defendant General Outdoor Advertising Company, Inc.; (8) to injure competitors of defendant General Outdoor Advertising Company, Inc., engaged in the operation of poster and paint display-plants with the intent to exclude them as competitors by threatening national advertisers that unless their contracts for national outdoor advertising displays are executed on the poster and/or paint-plants owned and operated by the General Company and/or its subsidiary or affiliated companies, and not on the plants of competitors, where such competition exists, the General Company will refuse to accept contracts from advertisers for execution on any of the plants owned and/or operated by it and/or its subsidiary and affiliated companies; (9) to compel owners and operators of so-called independent display-plants to sell their display-plants to, or exchange the same with, the General Company on such terms and conditions as may be determined by the General Company, by threatening, either expressly or impliedly, that unless such sale or exchange is made, the General Com-

pany will construct and operate a display-plant in competition with the display-plants of such so-called independent operators, or prevent them from receiving contracts for local outdoor advertising displays, being parts of large national outdoor advertising campaigns, in which the subletting of contracts for local displays is under the control of the General Company; and (10) to control the so-called independent operators of display plants throughout the United States, many of whom are members of the Association, and thus interfere with competing solicitors, by making such so-called independent operators subservient to the wishes of the General Company in their dealings with advertisers, and with solicitors and advertising agencies who are engaged in competition with the General Company, by virtue of the large volume of sublet business which such independent display-plant operators receive from the General Company.

IX

EXTENSION OF THE MONOPOLY POWER

Since the organization of the General Outdoor Advertising Company, Inc., in 1925 by the merger of the Cusack group of companies and the Fulton group of companies, as hereinbefore alleged, this defendant has owned and operated a poster-plant and a paint-plant in the city of Baltimore, Maryland, and in the territory surrounding that city (hereinafter sometimes collectively called "the Baltimore plant"), which, prior to the organization of the General Company, was owned and operated by the Cusack Company or one of its subsidiary corporations. At the present time and continuously for several years prior to the acquisition of the Baltimore plant by defendant

General Outdoor Advertising Company, Inc., the P. & H. Morton Advertising Company, a Maryland corporation, has owned and operated a poster-plant and paint-plant in the city of Baltimore, Maryland, and in the surrounding territory, including Annapolis, Maryland, Cumberland, Maryland; Washington, D. C.; and Alexandria, Virginia (hereinafter sometimes collectively called "the Morton plant"). Continuously since the acquisition of the Baltimore plant by the General Company, defendant General Company and the P. & H. Morton Company have been and now are engaged in active competition in the business of national outdoor advertising. In the course of this competition defendant General Outdoor Advertising Company, Inc., its officers, agents, and employees, have used the monopolistic power hereinbefore described and employed many of the unfair practices hereinbefore alleged, with the intent to injure the P. & H. Morton Company in the conduct of its national outdoor advertising business, and to exclude this company and the Morton plant as a competitor. The effect of the unlawful use by defendant General Company, its officers, agents, and employees of its monopolistic power against the Morton Company, as aforesaid, has been to cause the Morton Company to suffer losses of business, and it has been unlawfully restrained and interfered with in the conduct of its business, which, if continued, will cause the Morton Company to discontinue its national outdoor advertising business.

At frequent intervals during the past year or more, prior to the filing of this petition, defendant General Company has made offers to the Morton Company to purchase the outdoor advertising business conducted by it in com-

petition with the General Company, including the Morton plant. Concurrently with the making of these offers of purchase, defendant General Company, by its executive officers, has threatened the president of the Morton Company that unless the Morton Company would agree to sell its business and plant to the General Company the General Company would put the Morton Company out of business.

As a result of these offers and threats on the part of the officers of the General Company, the stockholders of the Morton Company have finally been compelled to agree to sell its business and the Morton plant to the defendant General Company, believing that it will be impossible to continue successfully the outdoor advertising business now conducted by the Morton Company, by reason of the continued threats and unlawful uses of the monopolistic power on the part of the General Company, as hereinbefore alleged. Accordingly, under date of November 22, 1927, defendant General Company and Henry Morton, of Baltimore, Maryland, as the representative of the owners of all of the outstanding capital stock of the Morton Company, entered into a contract, a copy of which, marked "Exhibit C," is annexed hereto and made a part hereof, whereby the said Henry Morton agreed to cause the business and assets of the Morton Company, including the Morton plant, to be conveyed to the General Company on the terms and on the conditions set forth in the said contract annexed hereto, such conditions, among others, being that neither Henry Morton nor the Morton Company will engage in the outdoor advertising business in the State of Maryland, the District of Columbia, and in Alexandria, Virginia, following the delivery of instruments of transfer, in accordance with the terms of the

said contract, excepting only as Henry Morton might engage in business in this territory in connection with the business of the defendant General Outdoor Advertising Company, Inc.

Defendant General Company has entered into the contract, dated November 22, 1927, for the acquisition of the business and assets of the Morton Company, with the intent and for the purpose of extending its monopolistic control of the outdoor advertising industry, and to secure to itself the more absolute power of directing and thus restraining interstate trade and commerce in the business of national outdoor advertising, as hereinbefore described, and to obtain absolute control of the display of national outdoor advertising matter in the city of Baltimore and the territory surrounding that city, which is essential to national outdoor advertisers in placing their advertising matter before the public of the United States. Petitioner further alleges that unless the proposed acquisition by defendant General Company of the business and property of the Morton Company in the city of Baltimore, Maryland, and the surrounding territory, is enjoined by this court, the monopolistic power in the outdoor advertising industry now held by defendant General Company and the other parties to the unlawful combination, as hereinbefore alleged, will be further extended, contrary to law.

In addition to the making of the contract for the acquisition of the business and property of the P. & H. Morton Company as aforesaid, defendant General Company has acquired additional display plants in Indianapolis, Indiana; Kansas City, Missouri; Dayton, Ohio; Memphis, Tennessee; Rome, Georgia; and Birmingham, Alabama, as well as in other places, the names of which are unknown

to this petitioner, each acquisition having been made for the purpose and with the effect of extending its monopolistic control over the outdoor advertising industry.

Defendant General Company is acquiring and intends to acquire other display-plants now in existence and is constructing and intends to construct additional display-plants, the names and locations of which are unknown to your petitioner, for the purpose and with the effect of excluding competitors and extending further its monopolistic control. Unless the defendant, General Company, is enjoined by this court from making such acquisitions and constructing such additional display-plants, this defendant will continue to extend its monopolistic control until eventually all competition in the operation of display-plants and in the interstate trade and commerce flowing thereto shall be entirely eliminated.

X

VIOLATION OF SECTION 8 OF THE CLAYTON ACT

In June, 1925, defendant George W. Kleiser, then being a director of defendant Foster and Kleiser Company, was elected to the board of directors of defendant General Outdoor Advertising Company, Inc., and he is now serving as a director of that company, and of the Foster and Kleiser Company. The capital, surplus, and undivided profits (exclusive of dividends declared, but not paid to stockholders) of the defendant General Outdoor Advertising Company, Inc., and of the defendant Foster and Kleiser Company, at the end of the fiscal year of each of said defendants next preceding the election of the said defendant Kleiser to the board of directors of the General

Outdoor Advertising Company, Inc., did aggregate and continuously since that date have aggregated more than one million dollars. The defendants, General Outdoor Advertising Company and Foster and Kleiser Company, are engaged in interstate and foreign trade and commerce in national outdoor advertising, as hereinbefore alleged, and by virtue of their businesses and the location of their respective operations, have been, now are, and but for the unlawful acts herein complained of, would now continue to be competitors, so that the elimination of competition by agreement between them would constitute, and in fact does constitute, a violation of the provisions of the Antitrust Laws of the United States. The election of the said defendant George W. Kleiser to the board of directors of the General Company, as aforesaid, is in violation of Section 8 of the Act of Congress of October 15, 1914, as amended May 15, 1916, and May 26, 1920, commonly called the Clayton Act.

PRAYER FOR RELIEF

Wherefore your petitioner prays:

That writs of subpoena issue directed to each and every of the defendants commanding them to appear and answer, but not under oath (answer under oath being hereby expressly waived) the allegations contained in this petition and to abide by and perform such orders and decrees as the court may make in the premises;

That this court order, adjudge, and decree:

I .That the combination and conspiracy to restrain interstate trade and commerce, and to monopolize and attempt to monopolize such commerce, as described in

the petition herein, be declared illegal and in violation of the Act of Congress of July 2, 1890 (26 Stat. 209) commonly called the Sherman Act, and the Acts amendatory thereof, and supplemental or additional thereto.

II. That the defendants and each of them, and each and all of their respective officers (in the case of corporate defendants), agents, employees, and all persons acting or claiming to act on behalf of them, or any of them, be enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the combination and conspiracy described herein, and from entering into, or performing, either directly or indirectly, expressly or impliedly, a similar combination.

III. That this court order, adjudge and decree that the defendant, General Outdoor Advertising Company, Inc., in and of itself is an illegal combination and an unlawful monopoly and attempt to monopolize interstate trade and commerce in outdoor advertising, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890 (26 Stat. 209), commonly called the Sherman Act, and that it be dissolved either entirely or in such separate parts and under such terms and conditions and within such period of time and under such directions as to this court may be just and fitting in the premises.

IV. That in the event, after hearing this cause, the court determines not to order, adjudge, and decree the dissolution of defendant, General Outdoor Advertising Company, Inc., as prayed for herein, then, in the alternative, this court order, adjudge, and decree as follows:

(1.) That the contract dated August 24, 1925, a copy of which is annexed hereto and marked "Exhibit A," en-

tered into and now existing between the General Company and the Bureau, be declared illegal and null and void, and that the General Company and the Bureau be perpetually enjoined, directly or indirectly, expressly or impliedly, from further carrying out this agreement; or from entering into or performing any similar agreement, or from entering into or performing any agreement or agreements, the intent or effect of which is, or will be, to restrain or monopolize the business of soliciting contracts for outdoor advertising displays, or the execution of such contracts.

(2.) That the several agreements designated "Option to Purchase Stock of National Outdoor Advertising Bureau, Inc.," a copy of the form of which is annexed hereto and marked "Exhibit B," entered into by George C. Sherman, Frederick J. Ross, and William D. McJunkin, as trustees for the Bureau and each stockholder of the Bureau, be declared null and void, and the Bureau and its trustees named in the option agreement, and each of them, be perpetually enjoined from carrying out the so-called option agreement, or from entering into or performing any similar agreement or agreements.

(3.) That within such time after the hearing of this cause as the court may determine, the General Company be perpetually enjoined from entering into or performing any contract or contracts for outdoor advertising displays to be executed on display plans owned or operated by persons other than the General Company, excepting only such contracts as are entered into directly with the General Company by the advertiser or advertisers for whom such contracts are to be executed.

(4.) That the Bureau be perpetually enjoined from giving or granting any preference, priority, rebate, or discrimination, in any form whatsoever, to, or in favor of, the General Company, in connection with any contract or contracts for outdoor advertising displays; or from interfering in any manner whatsoever with the selection of display-plants which have been made by Bureau members, or other persons employing its services in their several contracts for outdoor advertising displays, or from changing or refusing to comply with the instructions of such members, or other persons, with respect to the selection of the particular display-plant or display-plants on which such contracts are to be executed.

(5.) That the General Company be perpetually enjoined and restrained from doing, either directly or indirectly, any or all of the following acts:

(a) Giving or granting any preference, priority, rebate, or any illegal discrimination, in any form whatsoever, to, in favor of, or against the Bureau or any member thereof or any person employing the services of the Bureau, or any other person, in connection with any contract or contracts for outdoor advertising displays.

(b) Refusing or failing to furnish or to sell advertising space on the display-plants owned or operated by the General Company, or refusing or failing to permit the employment of such plants, when space thereon is available for sale or employment, with the intent or the effect of preventing competing solicitors from engaging in the solicitation and/or execution of contracts for outdoor advertising displays.

(c) Requiring or attempting to require, any person or persons to purchase, or agree to purchase, space on, or to use, or to agree to use, the display-plants of the General Company, or to employ, or to agree to employ, its services, in any place or places where the General Company operates display-plants or furnishes services in competition with competitors, in preference to the display-plants or the services of a competitor, as a condition to the making of a contract with such person or persons for the purchase of space on, or the use of, display-plants of the General Company, or the employment of its services in other localities.

(d) Inducing, or attempting to induce, advertisers not to employ, or to discontinue the employment of, the services of competing solicitors by granting secret rebates, or by entering into any arrangement for the formation of an advertising agency which in fact is a department of the business of an advertiser, or by making discriminations in price or service, where the purpose or the effect thereof is or may be to substantially lessen competition or tend to create a monopoly in the outdoor advertising business; provided, however, that the relief granted pursuant to this prayer shall not prevent the General Company from making discriminations in price between purchasers or users of space or employers of service on account of differences in grade, quality, or quantity thereof, or that makes due allowance for difference in the cost of selling or transportation, or discriminations in price in the same or different communities made in good faith to meet competition, or from selecting its own customers in bona fide transactions, and not in restraint of the outdoor advertising business.

(e) Requiring or attempting to require as a condition to the acceptance of any contract for an outdoor advertising display to be executed in part on the display plants owned and/or operated by the General Company and in part on display plants owned and/or operated by persons other than the General Company, that the General Company shall sublet the part or parts of such contracts to be executed on the display plants owned and/or operated by persons other than the General Company.

(f) Knowingly and falsely representing to persons that the quality of the services rendered, or to be rendered, by Competitors of the General Company, whether display-plant operators or solicitors, is, or will be, inferior to the quality of the services rendered, or to be rendered, by the General Company, where the purpose or effect thereof is, or will be, to induce such persons not to purchase space on, or to use the display-plants of, or employ the services of, such competitors of the General Company.

(g) Adopting or carrying out a practice, either generally or with respect to any particular community, of interfering with competitors, operators of display plants, with the purpose or knowingly with the effect of excluding such competitors from carrying on their regular course of business by (1) making unreasonable and exorbitant offers for locations for prospective and/or existing poster and/or paint display-boards or panels, or (2) with the intent to so exclude by building display-boards or panels immediately in front of the display-boards or panels of competitors or immediately in front of sites known to be held by competitors for prospective display-boards or panels, or (3) by employing any direct physical means

which prevents the construction, maintenance, or operation of such competing display-plant.

(h) Constructing any additional display-plant or display-plants) (except by way of replacement of an existing plant now owned by the General Company), where the purpose of constructing such additional display-plant or display-plants is primarily to exclude the owner or operator of an existing display-plant from engaging in, or continuing to engage in, the business of displaying national outdoor advertising matter.

(i) Acquiring the ownership or control of any additional display-plant or display-plants, whether now in existence or which may hereafter come into existence, where the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly in the ownership, control or operation of display-plants, either in a particular locality or generally throughout the United States or a section thereof.

(6.) That the General Company and Foster and Kleiser be perpetually enjoined and restrained from entering into or executing any contract, agreement, or understanding, either directly or indirectly, expressly or impliedly, concerning the division or allocation of the respective territory or territories, or place or places in which these corporations, or either of them, shall or shall not engage in the business of owning or operating outdoor advertising poster or paint-plants, or in which these corporations or either of them shall or shall not engage in the business of soliciting contracts for outdoor advertising; provided, however, that the relief granted under this prayer shall not prevent either Foster and Kleiser or the General Com-

pany from purchasing advertising space on the poster or paint-plants owned or operated by the other, whenever such purchase is necessary in connection with the performance of contracts for outdoor advertising displays procured by either of these defendants in the usual course of its business.

(7.) That, subject to the proviso contained in paragraph (6.) of this alternative prayer, the General Company, Foster and Kleiser, the Association, and the Bureau be, jointly and severally, perpetually enjoined and restrained from entering into or executing any contract, agreement, or understanding, either directly or indirectly, expressly or impliedly, fixing prices for the use of the outdoor advertising poster or paint-plants or any part or parts thereof, owned, controlled, and/or operated by any of the said defendants.

(8.) That the election of George W. Kleiser as a member of the board of directors of the General Company be declared a violation of Section 8 of the Act of Congress of October 15, 1914; that forthwith the said George W. Kleiser resign his office as a director of the said General Company; that the said George W. Kleiser be perpetually enjoined from accepting office as a director of the said General Company while he shall hold office as a director of Foster and Kleiser, or of any other corporation with which the General Company is, or may be, in competition in the outdoor advertising business.

(9.) That within such time as may be fixed by the court after the termination of the voting trust agreement dated February 26, 1925, as hereinafter prayed, under which the shares of the issued common stock of the General Company are now held, defendant Foster and

Kleiser Investment Company be ordered and directed to dispose of either the 50,000 shares of the common stock of the General Company owned by it, or the voting trust certificates representing such stock now held by it, so that the community of interest now existing between defendant Foster and Kleiser Investment Company, defendant Foster and Kleiser Company, and the General Company, by virtue of the ownership of the said stock or the voting trust certificates representing it, shall be permanently discontinued, and that the said Foster and Kleiser Investment Company, the Foster and Kleiser Company, and each and all of their respective officers, agents, and employees and all persons acting or claiming to act on behalf of them or either of them, be perpetually enjoined from acquiring any shares of stock in the General Company or any voting trust certificates representing the same, for the purpose or with the effect of establishing a community of interest between the Foster and Kleiser Company and the General Company, in connection with the conduct of their respective businesses in outdoor advertising; provided, however, that after the termination of the voting trust agreement dated February 26, 1925, and before the disposition of the 50,000 shares of common stock of the General Company shall have been made, as herein prayed, defendant Foster and Kleiser Investment Company shall not exercise any voting rights or make any other use whatsoever of the said 50,000 shares of common stock of the General Company by which the community of interest between the General Company and the Foster and Kleiser Company may be continued pending the final disposition of the said 50,000 shares of common stock, as herein prayed, or at any time subsequent thereto.

(10.) That within such time after hearing and determining this cause as the court may fix, the defendants Kerwin H. Fulton, George L. Johnson and George Armsby, individually and voting as trustees, be ordered and directed to cause the Voting Trust Agreement, dated as of February 26, 1925, referred to in the petition herein, to be terminated; and after the expiration of the period of time fixed by the court these defendants and each of them be enjoined from further performing this Voting Trust Agreement, either directly or indirectly, or from doing any act pursuant thereto, excepting only the transfer and delivery of certificates representing the shares of common stock in the General Company to such persons as are entitled to receive the same in exchange for voting trust certificates now issued and outstanding; and that the General Company and the defendants Kerwin H. Fulton, George L. Johnson and George Armsby, and each of them, be enjoined for a such period as the court may fix from entering into or performing any agreement similar to the Voting Trust Agreement, dated as of February 26, 1925.

(11.) That the contract dated November 22, 1927 referred to in the petition herein, entered into and now existing between the General Company and Henry Morton, as the representatives of the owners of all of the outstanding capital stock of the P. & H. Morton Advertising Company, a Maryland corporation having its principal office at Baltimore, Maryland, be declared illegal and null and void, and that the General Company be perpetually enjoined, directly or indirectly, expressly or impliedly, from carrying out this agreement, or doing or performing any acts pursuant thereto, or in accord-

ance therewith, or from entering into or performing any similar agreement.

V. That within such period after hearing and determining this cause as the court may fix, the Association be ordered and directed to submit to this Court a proposed plan for the reorganization of the administration of the affairs of the Association, which shall include the following provisions:

(a) That membership and voting rights in the Association shall be granted, within a reasonable time after proper application, considered in the order filed, without discrimination, to all reputable persons, firms or corporations who are engaged in the business of owning and/or operating outdoor advertising display-plants which conform to a reasonable standard of minimum requirements as to plant construction, operation, and coverage according to circulation of population, and who (1) shall conform to a reasonable and lawful code of ethics or standards of business practices adopted by the Association, (2) shall pay annually reasonable dues, (3) shall register currently with the Association statistical information concerning each separate display-plant now owned or operated, or which may hereafter be owned or operated by such member, including the price fixed by each individual member for the use of each of his display-plants, according to cities, towns, villages or other local political subdivisions. and (4) shall pay annually reasonable registration fees, without discrimination, in connection with the registration of each separate display-plant, and in determining the amount of such fees consideration shall be given primarily to the services actually rendered by the Association.

(b) That membership and voting rights shall be irrespective and independent of ownership, control, or location of any specified number of display-plants; provided, however, that in the national association the directors may be elected by geographical districts, and in voting for such directors according to districts, each member may cast one vote in each district in which such member is a bona fide operator of a display-plant; but provided always that not more than one director shall be elected who is an officer, agent, or employee of, or is associated with, a particular member.

(c) That the number of members shall not be arbitrarily restricted to any specified number of members for each city, town, village, or other local political subdivision.

(d) That the statistical information concerning the display-plants registered by each member shall be made available by the Association to all reputable advertising solicitors, and all other persons who, either as principal or agent, desire to purchase outdoor advertising space, or to employ the services of members in connection with outdoor advertising, on payment of reasonable charges therefor, but without arbitrary discrimination or selection, and without the imposition of any restriction with reference to the number of persons who may receive such statistical information.

(e) That changes in the prices fixed by each individual member for the use of his separate display-plant or display-plants, or the employment of his separate services may be made at any time by each individual member without giving prior notice of such change to the Association; provided that after a

change in price has been made by a member, and notice thereof is given the Association, information of such change shall immediately be furnished to advertising solicitors and all persons entitled to receive the statistical information furnished by the Association, under the provisions of paragraph (d) hereof.

(f) That changes in allotments which constitute a showing of advertising matter on a particular display-plant of a member in accordance with the minimum requirements of the Association as to coverage according to circulation of population (which is included in the statistical information furnished by members to the Association) may be made by such member at any time; provided that, in the interest of promoting trade and commerce in the outdoor advertising industry through the facilities afforded by the Association in gathering and disseminating statistical information concerning poster-plants of members, including information as to allotments, reasonable notice of such changes in allotments shall be furnished the Association by members in advance of the date on which such change in allotments is to be made effective by such member, which notice of change in allotments shall immediately be furnished by the Association to advertising solicitors and all persons entitled to receive the statistical information furnished by the Association under the provisions of paragraph (d) hereof, to enable them to make reasonable use thereof in preparing estimates of the cost of outdoor advertising displays in advance of entering into contracts with advertisers on behalf of individual members of the Association.

VI. That the terms of the decree prayed for herein shall be binding upon and shall extend to each and every

one of the successors in interest of any and/or all of the defendants herein, and to any and all corporations, co-partnerships, and/or individuals who may hereafter acquire ownership or control, directly or indirectly, of the stock or of the property, business, and good will of any of the corporate defendants, whether by merger, consolidation, reorganization, transfer of assets, or otherwise.

VII. That the court retain jurisdiction of this cause for the following purposes: (a) Enforcing this decree, (b) enabling the petitioner to apply to the court for a modification or enlargement of any provisions of this decree on the ground that the decree is inadequate, or (c) enabling the defendants or any of them to apply for a modification of any of the provisions of this decree on the ground that they have become inappropriate or unnecessary.

VIII. That the petitioner have such other, further, and different relief as may be necessary and the court may deem proper in the premises.

IX. That the petitioner recover its taxable costs.

UNITED STATES OF AMERICA,
 Charles H Tuttle
 United States Attorney.

Under the direction of—

John G. Sargent
 Attorney General.

William J. Donovan
 Assistant to the Attorney General.

Rush H. Williamson
 Horace R. Lamb
 Special Assistants to the Attorney General.

EXHIBIT "A"

Memorandum of Agreement Between National Outdoor Advertising Bureau, Inc., and General Outdoor Advertising Co., Inc., Dated August 24, 1925

This contract, made this 24th day of August, 1925, by and between General Outdoor Advertising Co., Inc., a New Jersey corporation (hereinafter called "the Company"), party of the first part, and National Outdoor Advertising Bureau, Inc., a New York corporation (hereinafter called "the Bureau"), party of the second part:

Witnesseth

That for and in consideration of the mutual covenants hereinafter contained and of the sum of One Dollar and other good and valuable considerations, by each of the parties to the other paid, receipt whereof is hereby acknowledged, the parties hereto do agree with each other as follows:

I. The Company hereby authorizes the Bureau, upon the terms and subject to the limitations hereinafter expressed, to solicit contracts for outdoor advertising to be executed upon outdoor advertising plants owned and/or operated by the Company and, at the option of the Bureau, to solicit such contracts to be executed upon such plants not owned and/or operated by the Company. For the purpose aforesaid, but for no other purpose, and subject always to the terms and limitations expressed in this contract, the Bureau shall be deemed to and shall be the agent of the Company.

II. The Company shall forthwith furnish to the Bureau a complete memorandum of the standard or card

rates applicable to that portion of the display advertising plants and bulletins owned and/or operated by the Company with respect to which standard or card rates have been established. If the Company shall at any time make any change and/or changes in the said standard or card rates, the Company shall notify the Bureau of such change and/or changes at least thirty days prior to the date upon which the same shall become effective and not later than the Company shall give notice thereof to any soliciting unit other than the Bureau, including its own direct sales organization.

The Company shall also from time to time furnish to the Bureau full information regarding the painted and electric display bulletins owned and/or operated by the Company with respect to which no standard or card rates shall have been established and of all special rates or terms upon which such bulletins may be offered to advertisers, and shall furnish to the Bureau copies of all bulletins of rate space and service information prepared by the Company for the use of its own direct sales organization and/or any other soliciting unit.

The Company shall also from time to time furnish to the Bureau full information at the time possessed by the Company regarding outdoor advertising plants other than those owned and/or operated by the Company, and in all its transactions with any such plant and/or plants with respect to the Bureau business, the Company shall observe the same care and endeavor to obtain the same service as in connection with business developed by its own direct sales organization.

It is the intention and purpose of this article of this contract that the Bureau shall at all times have available

to it for the purposes of its solicitation under this contract, full, accurate, and current information regarding the outdoor advertising plants owned and/or operated by the Company and of the terms, both standard and special, if any, which at the time may be offered to advertisers, and that the position of the Bureau in this respect shall be fully as favorable as that of the Company's own direct sales organization; further, that the Company shall cooperate in every way with the Bureau in its effort to secure full recognition as a solicitor from all the owners of outdoor advertising plants and/or the Poster Advertising Association to the end that the Bureau may secure from all currently standard commissions, terms, and facilities.

All contracts procured by the Bureau to be carried out upon plants owned and/or operated by the Company shall be at rates established by the Company, whether standard or special, and no allowance, rebate, adjustment, concession, cut-rate, and/or free service and/or other terms, the effect of which would be to reduce and/or modify such rates, shall be made and/or allowed by the Bureau and/or by the advertising agency or person connected and/or affiliated therewith. Similarly, all contracts obtained by the Company by direct solicitation shall be at the Company's current rates, standard or special, and no allowance, rebate, adjustment, concession, cut-rate, and/or free service and/or other terms, the effect of which would be to reduce and/or modify such rates, shall be made or allowed by the Company. The Company shall also use its best endeavors to see that the aforesaid practice is followed by all solicitors of outdoor advertising with respect to all contracts to be performed upon plants owned and/or operated by the Company.

III. All advertising contracts procured and/or obtained by the Bureau shall be subject to the written acceptance thereof by the Company, signed by an officer of the Company duly authorized. The action and policy of the Company with respect to acceptance of all such contracts shall be in accordance with the general policies of the Company at the time in force and in respect thereof as the Company shall accord to the Bureau as great a degree of consideration and as favorable treatment as the Company shall accord to any other soliciting unit, including the Company's own sales force engaged in direct solicitation.

IV. Any and all advertising contracts, procured and/or obtained by the Bureau to be performed by the Company, shall forthwith be assigned by the Bureau to the Company.

V. The Company shall pay to the Bureau in full of all compensation and expenses of the Bureau a commission of twelve per cent (12%) computed upon all amounts actually paid by advertisers under contracts for outdoor advertising procured and/or obtained by the Bureau for the Company and accepted by and assigned to the Company as hereinbefore provided (including all contracts to be carried out either in whole or in part upon advertising plants other than those owned and/or operated by the Company), and in respect of which the Company shall receive payment.

In practice, the Company shall currently render invoices for service performed by the Company under contracts obtained by the Bureau upon a special form or forms similar to those now in use and which shall appropriately display the name of the Company and the Bureau. All such invoices shall be rendered to the Agen-

cies respectively through whom the contracts respectively shall have been obtained, and duplicates thereof shall be furnished to the Bureau. Such Agencies shall in remitting deduct the amount of the commission, not exceeding twelve per cent (12%), which may be payable to them under arrangements currently existing between them and the Bureau, of which the Company shall have had previous written notice, and shall pay the amount of the invoice, less such deduction, to the Company. On the first day of each month during the term of this contract, the Company shall render to the Bureau a true and correct report of the amount of the invoices with respect to which the Company shall have received payment as aforesaid to the twentieth day of the preceding calendar month and not theretofore returned to the Bureau, and therewith the Company shall pay to the Bureau an amount equivalent to the difference between twelve per cent (12%) of the aggregate face amount of such invoices and the aggregate of the amounts in respect thereof returned by the agencies as aforesaid.

By way of explanation of the foregoing, the amount which would be retained by an Agency under the foregoing provisions and under arrangements presently existing between the Agencies and Bureau would be ten per cent (10%) of the face amount of the invoice, and the amount payable to the Bureau by the Company would be two per cent (2%) thereof.

The Bureau shall aid and assist the Company, in so far as may be practicable, in the collection of accounts due from advertisers and/or agencies under any and all contracts aforesaid.

VI. So long as the accounts of the advertisers whose names are set forth upon a schedule thereof hereto annexed, marked Exhibit A, and by reference made a part hereof, are active in outdoor advertising and are upon the books of the Bureau and/or advertising Agency which at the time shall be affiliated and/or connected with the Bureau, the Company shall refrain from any solicitation of the said advertisers. Excepting as may be hereafter otherwise agreed on in writing by the parties hereto, the Company shall have the right to solicit contracts for outdoor advertising from any of the said advertisers if and so long as the account and/or accounts thereof shall not be upon the books of the Bureau and/or any affiliated or connected Agency, and/or if such account and/or accounts, though remaining on the books of the Bureau and/or any affiliated or connected Agency, shall become inactive in outdoor advertising.

So long as the accounts of the advertisers shown upon a schedule thereof hereto annexed marked Exhibit B and by reference made a part hereof, are upon the books of the Company and are active in outdoor advertising, the Bureau shall have no authority to solicit contracts for outdoor advertising from the said advertisers, and the Bureau and its affiliated and connected agencies shall refrain from solicitation thereof. The Bureau, however, shall have the right to solicit contracts for outdoor advertising from any of the said advertisers if and so long as the account and/or accounts thereof shall not be upon the books of the Company and/or if such account and/or accounts, though remaining on the books of the Company, shall become inactive in outdoor advertising.

Seasonal or periodical accounts shall not be deemed inactive during the normal period of their suspension.

Accounts acquired hereafter by the Bureau or the Company shall be automatically added respectively to Exhibits A and B, and thereupon shall become subject to the pertinent provisions of this article of this contract.

All accounts at the time not included among the accounts currently listed in Exhibits A and B shall be open to solicitation by either the Company or the Bureau, excepting as may be otherwise hereafter agreed upon in writing.

VII. The Company shall forthwith in aid of the sales effort of the Bureau, establish an adequate department composed of capable and experienced representatives who shall cooperate with the Bureau and/or its affiliated Agencies in securing and servicing outdoor advertising accounts through the Bureau and/or its affiliated Agencies only. Excepting as may be otherwise agreed from time to time, the Company, however, shall not be obligated to furnish the services of any person in the Department aforesaid for actual participation in negotiations with advertisers whose accounts are at the time the subject of active competitive solicitation by the Bureau and the Company.

The Company at all times shall use all due diligence in executing all contracts procured by the Bureau and accepted by the Company, and in performing all such contracts the Company shall in all branches of its service, excepting those having to do with the creation and development of design, copy, and ideas for the merchandising of the advertiser's product, assist and cooperate with the Bureau fully and as fully as with any other solicitor of

contracts for outdoor advertising, including the Company's own sales force. The Bureau and its affiliated and connected Agencies shall use and employ its and their best endeavors in the development and extension of the use of the outdoor medium and in the solicitation of contracts to be performed upon the plants and bulletins of the Company.

The Bureau shall at all times during the term of this contract apply a reasonable portion of its total revenues to the employment of competent salesmen soliciting outdoor advertising.

VIII. Each contract for outdoor advertising tendered by the Bureau to the Company shall be plainly marked or stamped with the name of the Agency affiliated or connected with the Bureau by which the contract shall have been procured. If any such Agency shall perform any act which, if done by the Bureau, would be a breach of this contract, or omit to do any act which, if omitted by the Bureau, would be a breach of its contract, and shall fail to make good such default after reasonable written notice thereof to the Agency and to the Bureau, the Company shall have the right to refuse to pay any commissions with respect to contracts for outdoor advertising thereafter procured by such agency, for such time as the Company, in its sole discretion, may determine, but neither the Bureau nor its affiliated or connected Agencies other than the Agency in default shall be under any liability with respect to such a default.

All contracts made by the Company with plant owners other than the Company with respect to the execution of outdoor advertising service required under any contract procured by the Bureau and not to be performed on the outdoor advertising plants owned and/or operated by the

Company shall be stamped or marked with the name of the Bureau.

IX. The term "outdoor advertising" shall be construed to include poster advertising, painted display advertising, electrical display advertising, and any and all other forms of advertising now or hereafter developed and/or engaged in by the Company.

X. Anything hereinbefore contained apparently to the contrary notwithstanding, no commissions shall be payable by the Company to the Bureau with respect to "local business" under contracts and/or renewals hereafter obtained, excepting the "local business" accounts shown upon Exhibit A with respect to which commissions shall be paid at the rate and in the manner provided by paragraph V of this contract.

The term "local business" shall be construed to mean all contracts for outdoor advertising for account of any person operating a retail merchandising business within the city, town, or village in which the contract is to be performed.

XI. The Company recognizes that the cost of the service to be rendered by the Bureau, as contemplated by this contract, will exceed the cost of the service commonly performed in connection with outdoor advertising by a general advertising agency. To avoid discrimination against the Bureau and in favor of any general advertising agency, the Company shall pay to any such general adver-

tising agency commissions upon business produced at not more than the maximum rate of ten per cent (10%).

XII. This contract shall continue and be in full force for a minimum period of five years from the date hereof, which period shall be automatically extended by an additional year for each year of operation hereafter under it or if, as so extended, until notice in writing be given by either party to the other of its desire to terminate the same. Following the giving of such notice the period of this contract shall continue to and terminate at five years from the end of the year of the contract in which such notice be given. Any such notice shall be in writing, subscribed by the party giving the same, enclosed in a customary envelope or wrapper, addressed to the Company at its then executive office in the City of New York, and to the Bureau at its then executive office in the City of New York, and shall be complete from the time of deposit thereof as aforesaid, postage prepaid, in any United States post office, official mail box, and/or official mail chute.

Upon the expiration or sooner termination of this contract, all current contracts for outdoor advertising theretofore assigned by the Bureau to the Company shall be forthwith reassigned to the Bureau.

XIII. The parties shall cause the contract between Thomas Cusack Company and the Bureau, dated November 19, 1918, to be cancelled as of the date of this contract.

XIV. This contract shall extend and apply to the Company and to all and singular the corporations controlled and/or operated by the Company.

In Witness Whereof, the parties hereto have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized.

General Outdoor
Advertising Co., Inc.,
(Signed) By Kerwin H. Fulton,
President.

Attest:

Geo. L. Johnson (signed).
National Outdoor
Advertising Bureau, Inc.,
(Signed) By Geo. C. Sherman,
President.

Attest:

F. T. Hopkins (signed).

(Appended to the original contract are Exhibits A and B, being lists of "Bureau Accounts" and "Company Accounts," respectively, referred to in Paragraph VI of the foregoing contract.)

EXHIBIT "B"

Option to Purchase Stock of National Outdoor Advertising Bureau, Inc.

Whereas, the National Advertising Bureau, Inc., hereinafter called the Bureau, is a corporation organized for the promotion of Outdoor Advertising; and

Whereas, the Bureau has a contract with General Outdoor Advertising Co., Inc., dated August 24, 1925, which is effective until notice of cancellation by either party be given and for five years from the close of the year in which such notice is given; and

Whereas, the Bureau has most advantageous facilities for the placing of outdoor advertising throughout the United States through the said contract with General Outdoor Advertising Co., Inc., and otherwise; and

Whereas, it is the policy of the Bureau to transact business only for those advertising agencies of approved standing, which have become qualified as members of the Bureau by payment of an initiation fee and by purchase of an option upon some amount of the Bureau's capital stock and otherwise complying with the Bureau's terms, and

Whereas, hereinafter called the grantee, desires so to qualify and become a member of the Bureau;

we, Therefore, George C. Sherman, Frederick J. Ross, and William D. McJunkin, who are trustees for the Bureau and those purchasing options upon the capital stock of the Bureau, hereby grant to the grantee an option to purchase at any time at and after the date of the expiration of said contract between the Bureau and General Out-

door Advertising Co., Inc., aforementioned, One share of said stock at the price of \$100 upon the following terms and conditions:

First. That the grantee shall, within fifteen days from the date hereof, pay to said trustees as the price of this option the sum of One hundred dollars and shall return to said trustees a duplicate hereof duly signed by the grantee.

Second. That, as the share covered by this option is subject to assessment by the Bureau during the life of this option to an amount not exceeding \$100 in any calendar year, the grantee agrees to pay to the Bureau the amount of any such assessment and/or assessments, if any, when and as the same may be made.

Third. During the life of this option, the trustees will, upon request from the grantee, give a stock proxy on the share hereby covered at any time and from time to time, and will pay or cause to be paid to the grantee all dividends which may be paid thereon, or a sum equivalent thereto.

Fourth. During the life of this option the grantee covenants and agrees that the Bureau shall be the grantee's sole agent for the placing of outdoor advertising and shall collect and receive for its services and expenses of every nature that percentage of the commissions which may be paid on account of such advertising as is currently charged to all its other members.

Fifth. This option is personal to the grantee and is not transferable, nor can any rights or privileges under it, or of membership in the Bureau, be transferred.

Sixth. It is agreed that any breach of any of the terms hereof by the grantee or any act or conduct of the

grantee which shall or may be prejudicial to the interests of the Bureau, may cause the suspension or expulsion of the grantee from membership in the Bureau and the forfeiture of all the rights and privileges of membership, as well as the forfeiture and cancellation of this option, and the forfeiture of the moneys paid therefor.

Seventh. If any complaint be made by the Bureau or any of its officers, agents, or members of any breach of the terms hereof or of any act or conduct prejudicial to it by the grantee, the trustees shall notify the grantee thereof, giving reasonable time and opportunity for the latter to reply. After hearing the complainant and the grantee and any evidence pertaining to the facts which may be offered the Trustees, it is hereby covenanted and agreed by the Bureau and the grantee that the Trustees shall act as arbitrators and, as such, shall determine the issues and define the penalty, both the Bureau and the grantee hereby agreeing to be bound by their decision.

Eighth. The Bureau consents to execution of this option upon the terms stated, will deliver a certificate of its capital stock to the trustees to be held by them against said option upon receipt from them of payment therefor in the sum of \$100 and will, itself, be bound by such of the terms of this agreement as are pertinent to it.

In Witness Whereof, the parties hereto have executed this instrument this day of _____, 192—.

National Outdoor Advertising Bureau, Inc.,

By _____, President.

Agency _____,

By _____.

EXHIBIT "C"

This Agreement, made this 22nd day of November, 1927, between Henry Morton, of Baltimore, Md., hereinafter called the Seller, and General Outdoor Advertising Co., Inc., a New Jersey Corporation, having its principal office for the transaction of business in the City of New York, N. Y., hereinafter called the Buyer—

Whereas P. & H. Morton Advertising Company, a Maryland Corporation of Baltimore, Md., hereinafter sometimes referred to as the Company, is presently engaged, among other things, in the Outdoor Advertising business, but is about to retire from the Outdoor Advertising business and to distribute its Outdoor Advertising Plant and certain of its assets incidental thereto to its stockholders in partial liquidation; and

Whereas the Seller does hereby represent and warrant by these presents that he owns or controls all of the outstanding capital stock of the Company.

Now, Therefore, This Agreement Witnesseth:

That the parties hereto, in consideration of the mutual covenants hereinafter expressed and of the sum of One Dollar by each of the parties to the other in hand paid, the receipt whereof is hereby acknowledged, hereby agree as follows:

I. The Seller shall duly acquire from the Company, and shall grant, convey, sell and deliver to the Buyer, and the Buyer shall purchase from the Seller the following

assets of the Company incidental to its Outdoor Advertising business, namely—

(a) All and singular the poster panels, painted bulletins and/or other structures (including ground, wall, roof, illuminated and/or nonilluminated panels and/or bulletins of every kind and description) for the display of copy in outdoor advertising presently owned by the Company consisting of approximately 1404 Regular Poster Panels, 335 Special Poster Panels, 569 Three-Sheet Poster Panels, 373 Painted Bulletins, and 619 Wall Spaces, located in Baltimore, Cumberland, Frederick, Annapolis and other smaller towns in the Washington District and elsewhere. A list of towns herein referred to is annexed hereto marked Schedule "A" and by reference made a part hereof.

(b) All tools, trucks, automobiles, supplies, material and equipment of every kind or description presently owned by the Company and used in its business, excepting only office furniture, fixtures, office equipment and One Cadillac, One Moon, One Chandler and One Hup-Mobile (Engine Number 491197; serial Number 48836) which, though carried on the books of the Company, are the individual property of Mrs. Morton, the Seller, Edward Schaub, and Lawrence Morton, respectively.

(c) All leases, licenses, contracts and privileges for locations of the advertising structures and spaces aforesaid, but not including real estate owned by the Company in fee.

(d) All contracts with advertisers for advertising service to be rendered upon and/or in connec-

tion with the advertising structures aforesaid or otherwise.

(e) All and singular the above described assets presently owned by the Company and used in the operation of a poster advertising and painted display advertising plant and business, including the Commercial Sign Department, together with the good will thereof and including the certain contract made between the Company and Michael P. Gillen of Baltimore, Md. under and by which the said Michael P. Gillen has agreed not to engage in the Outdoor Advertising business for a period mentioned in said contract.

II. The transfer of all and singular the foregoing property and assets shall be made free and clear of all liens and encumbrances whatsoever. The instruments of transfer shall contain provisions appropriate to express the following covenants and/or warranties of the Seller—

(a) That the Seller is the owner free and clear of all liens and encumbrances, of all and singular the said property and assets and has good right to convey the same.

(b) That the outdoor advertising structures thereby transferred shall include not less than the numbers hereinbefore set forth of a lineal footage respecting poster panels and painted bulletins and of a square footage respecting painted walls, approximately as specified in a Schedule thereof hereto attached and marked Schedule "B," together with the leases and/or contracts for locations pertinent to the locations upon which such outdoor advertising struc-

tures are located and/or maintained, excepting only five (5) of such structures which are located and maintained upon real property owned by the Seller or the Company, with reference to which provision is hereinafter made.

(c) That the structures thereby transferred are in condition equal to the usual standards prevailing in the outdoor advertising industry, commonly known as Double "A" in posting and Gude type and standard in paint.

(d) That all of the said leases and/or contracts for locations are valid and subsisting according to the tenor thereof respectively, and that all rents and/or other payments which shall have accrued thereunder prior to the date as of which the closing hereunder shall be had and in respect of which no adjustment shall have been made at the closing (if any) have been paid.

III. Upon the closing, hereunder, adjustments shall be made as of January 1, 1928, with respect to rents prepaid, accruing and to accrue under all the leases and/or contracts for locations aforesaid, to payments under contracts with advertisers for advertising services to be rendered as aforesaid, after January 1, 1928, to special taxes on said Outdoor Advertising structures (if any), insurance and Outdoor Advertising Association dues. The Seller covenants that neither he nor the Company shall, prior to the date of closing hereunder, solicit payments from advertisers under contracts for Outdoor Advertising service to

be rendered by the Company or the Seller, excepting in the regular course of business and in accordance with the terms of such contracts respectively. The Seller further covenants that all payments (if any) otherwise received by the Seller or the Company prior to the date of closing hereunder shall be accounted for by the Seller to the Buyer upon the closing. The Seller further covenants that until the closing hereunder shall be had, the Company and/or the Seller shall continue to conduct its business and to service and maintain said advertising structures as well as leases and/or contracts hereby agreed to be transferred in the same manner as heretofore serviced and maintained by the Company in the ordinary conduct of its business, it being the intent thereof that from and after January 1, 1928, the properties aforesaid shall be operated by the Seller and/or the Company for account of the Buyer.

IV. The Seller shall cause proceedings duly to be had by the Company and its stockholders and directors to the end that the Seller shall duly acquire title to the property, more particularly described in this agreement, and shall have, at the time of closing, a good title thereto sufficient to grant, convey, sell, and deliver the same to the Buyer hereunder, free and clear of all liens and encumbrances as herein specified, and the Seller shall cause the Company to permit counsel for the Buyer to inspect the record of all such proceedings.

V. The Seller shall, at the request of the Buyer, take and shall cause the Company to take any legal steps,

whether under any bulk Sales Act applicable or otherwise to the end that the Buyer as a result of the transfer hereunder shall obtain good and valid title free and clear of all claims, liens, and encumbrances of all and singular the property and assets above described.

VI. Upon the closing hereunder the Seller shall cause leases to be executed and delivered to the Buyer of spaces for the erection and maintenance of Advertising Structures for the locations and for the terms and upon the rents respectively shown upon a schedule hereto annexed marked Schedule "C" and by reference made a part thereof, such leases to be executed and delivered by the Seller and/or the Company and/or any other parties having title to the locations and having the right to grant such leases.

VII. The Buyer shall not assume and/or become charged with any obligations, liability, and/or commitment whatsoever of the Seller or of the Company as a result of the transfer, save only the following with respect to which the Buyer shall save and hold harmless the Seller and the Company:

(a) The performance of all obligations of the Company under all leases and/or contracts for locations of advertising structures which shall accrue subsequently to January 1, 1928, and/or with respect to which adjustment in favor of the Buyer shall be made upon the date of delivery of such instruments of transfer.

(b) The performance of all of the obligations of the Company under terms of the Company's present contracts with advertisers for outdoor advertising service to be rendered by the Company, which shall accrue subsequently to January 1, 1928.

VIII. For the assurance to the Buyer of the beneficial enjoyment of the good will of the Company hereby agreed to be transferred, the Seller hereby agrees that he will not and will not permit the Company to engage in the Outdoor Advertising business in the State of Maryland, District of Columbia, or Alexandria, Va., following the delivery of instruments of transfer hereunder, excepting only as the Seller may engage in such business in such territory in connection with the business of the Buyer, its successors or assigns.

IX. The Seller covenants that neither he nor the Company have outstanding any purchase employment and/or other contracts other than leases, contracts for locations and contracts with advertisers for advertising service to be rendered by the Company, the term of which expires beyond December 31, 1927, excepting only the above mentioned contract with Michael P. Gillen (which has been exhibited by the Seller to the Buyer and is by reference made a part hereof) under which the Company has agreed to employ the said Michael P. Gillen for a period of four years from April 1, 1926. The said contract shall be duly transferred to and assumed by the Buyer as of the date of closing hereunder.

X. The purchase price is Six Hundred Twenty-Nine Thousand Dollars (\$629,000.00) payable Twenty-Five Thousand Dollars (\$25,000.00) upon execution hereof, receipt whereof is hereby acknowledged, by the Seller, and balance in cash, New York funds, on the closing.

XI. Delivery of instruments of transfer to the Buyer and payment to the Seller, as herein provided, shall be made at the office of the Buyer at Number One Park Avenue, New York City, within sixty (60) days from the date hereof, on a day and at an hour to be specified by the Buyer in a written notice signed by the Buyer and mailed to the Seller not less than ten (10) days before the day and hour specified for the closing and addressed to the Seller at 222 S. Howard Street, Baltimore, Md.

In Witness Whereof, the Seller has hereunto set his hand and seal and the Buyer has caused these presents to be signed in its corporate name and its corporate seal to be hereunto affixed by its officers duly authorized thereto the day and year first above written.

(Signed) Henry Morton. [L. S.]

Witness:

(Signed) Wm. M. Williams.

General Outdoor
Advertising Co., Inc.,

(Signed) By K. H. Fulton, President.

Attest:

(Signed) I. W. Digges, Secretary.

AMENDMENT TO EXHIBIT "C"

Without prejudice to the rights of either of the undersigned under the purchase and sale contract between the undersigned dated November 22nd, 1927, it is agreed:

(1) That Paragraph Eleven of the said contract shall be amended so as to read as follows:

Delivery of instruments of transfer to the Buyer and payment to the Seller, as herein provided, shall be made at the office of the Buyer at No. One Park Avenue, New York City, within thirty days from January 21, 1928, on a day and hour to be specified by the Buyer in a written notice signed by the Buyer and mailed to the Seller not less than ten days before the day and hour specified for the closing and addressed to the Seller at 222 South Howard Street, Baltimore, Maryland.

(2) That interest upon the purchase price from January 21, 1928, shall be paid by the Buyer.

(3) If, upon the closing under said contract, the footage to be sold by the Seller to the Buyer thereunder shall on a correct check-up be found to be less than the approximate amount specified in said contract, and the shortage so found to exist is or was caused by wind or cyclone subsequent to January 21, 1928, the shortage so determined shall be allowed to the Seller.

(4) Excepting as hereby expressly modified the terms of the said contract of November 22, 1927, remain unchanged.

In Witness Whereof the Seller has hereunto set his hand and seal, and the Buyer has caused these Presents to be signed in its corporate name and its corporate seal to be hereunto affixed by its officers duly authorized this Tenth day of January, 1928.

(Signed) Henry Morton. [L. S.]

Witness:

(Signed) G. F. Hurd.

(Signed) Wm. M. Williams.

General Outdoor
Advertising Co., Inc.,

(Signed) K. H. Fulton, President

Attest:

(Signed) I. W. Digges, Secretary.

United States of America }
 Southern District of New York }^{ss:}

I, CHARLES WEISER, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the writings annexed to this certificate have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 8th day of November in the year of our Lord one thousand nine hundred and thirty-four and of the Independence of the United States the One Hundred and Fifty-ninth

[Seal of the District Court of the United States]

Charles Weiser Clerk.

No. 5673-C. Special Site vs. Foster & Kleiser Plf Exhibit No. 218 in evid 1/10/35, withdrawn from evidence, and now marked for ident. Filed 1/11 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

The certified copy of the decree in the above entitled case was thereupon received in evidence and marked Plaintiff's Exhibit 219.

Said Plaintiff's Exhibit 219 is in words and figures as follows, to wit:

[PLAINTIFF EXHIBIT No. 219.]

In the
 District Court of the United States
 in and
 For the Southern District of New York.

UNITED STATES OF AMERICA,
 Petitioner,

v.

GENERAL OUTDOOR ADVERTISING CO., INC.,
 NATIONAL OUTDOOR ADVERTISING BU-
 REAU, INC., OUTDOOR ADVERTISING AS-
 SOCIATION OF AMERICA, INC., FOSTER
 AND KLEISER COMPANY, FOSTER AND
 KLEISER INVESTMENT COMPANY, KER-
 WIN H. FULTON, GEORGE JOHNSON,
 GEORGE ARMSBY, Individually and as Voting
 Trustees, and GEORGE W. KLEISER,
 Defendants.

FINAL DECREE

Charles H. Tuttle,
 United States Attorney.

William D. Mitchell,
 Attorney General.

Horace R. Lamb,
 Breck P. McAllister,
 Special Assistants to
 The Attorney General.

Entered, May 7, 1929.

United States District Court
For the Southern District of New York.

United States of America,)	
)	Petitioner,
v.)	
General Outdoor Advertising Co., Inc.,)	
National Outdoor Advertising Bureau,)	
Inc., Outdoor Advertising Association)	In Equity
of America, Inc., Foster and Kleiser)	No. 46-50.
Company, Foster and Kleiser Investment)	
Company, Kerwin H. Fulton, George)	
Johnson, George Armsby, individually)	
and as Voting Trustees, and George W.)	
Kleiser,)	
)	Defendants.

FINAL DECREE

This cause came on to be heard at this term, and on consideration thereof, and on motion of the petitioner, by Charles H. Tuttle, Esq., United States Attorney, and Horace R. Lamb, Esq., and Breck P. McAllister, Esq., Special Assistants to the Attorney General, of counsel, for relief in accordance with the prayer of the petition, and it appearing to the satisfaction of the court that the petitioner is entitled to the relief hereinafter granted, and the defendants appearing by their counsel and consenting in open court to the rendition and entry of this decree, now, therefore,

It is Ordered, Adjudged and Decreed, as follows:

I.

Definitions.

The term "Persons," as used herein, includes individuals, firms, associations, corporations, municipalities and/or governmental agencies.

The term "Poster-Plant," as used herein, means the several billboards, and/or poster-panels (whether built as separate structures or attached to building-walls, or otherwise) used for the purpose of showing outdoor advertising posters or lithographs, which are under common ownership and are located in a given city, town, village or other operating area.

The term "Paint-Plant," as used herein, means the several signboards, paint-panels, and/or bulletin-boards (whether built as separate structures or attached to or part of building-walls, or other structures) used for the purpose of having painted thereon designs, slogans, and other outdoor advertising matter, which are under common ownership and are located in a given city, town, village or other operating area.

The term "Display-Plant," as used herein, includes the term "Poster-Plant" and/or "Paint-Plant," as defined herein.

The term "Display-Plant Operator," as used herein, means any person, firm or corporation engaged in the business of owning and operating either a "Poster-Plant" and/or a "Paint-Plant."

The term "General Agency," as used herein, means any person, firm or corporation engaged in the business of

soliciting contracts for periodical, newspaper and other forms of advertising, as well as for the display of outdoor advertising matter on display plants.

The term "solicitor," as used herein, means any person, firm or corporation engaged exclusively in the business of soliciting contracts for the display of outdoor advertising matter on "Display-Plants."

The term "General Company," as used herein, means the General Outdoor Advertising Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as well as any other corporation which is engaged in the outdoor advertising business, either as a Solicitor or as an Operator of a display plant, either as principal or agent, a majority of the voting stock of which is owned or controlled by the said General Outdoor Advertising Co., Inc., and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act on behalf of it or them, or any of them.

The term "Bureau," as used herein, means the National Outdoor Advertising Bureau, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, as well as the advertising agencies owning one or more shares of its stock or holding options to acquire such stock, which agencies are hereinafter sometimes referred to as "Bureau Members," and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act, on behalf of it or them or any of them.

II.

1. That the petition herein states a cause of action against the defendants under the Act of Congress of July 2nd, 1890, and/or the Act of Congress of October 15, 1914, as amended, and that the Court has jurisdiction of the parties and of the subject matter alleged in the petition.

2. That the contract dated August 24, 1925, a copy of which is annexed to the petition herein and marked Exhibit "A", entered into and now existing between the General Company and the Bureau, be, and the same hereby is, declared illegal and null and void, and that the General Company and the Bureau be, and they hereby are, perpetually enjoined from directly or indirectly, expressly or impliedly, further carrying out this agreement, or from entering into or performing any similar agreement, or from entering into or performing any agreement or agreements, the intent or effect of which is, or will be, to restrain or monopolize the business of soliciting contracts for outdoor advertising displays, or the execution of such contracts; provided, however, (1) that operations under the contract dated August 24, 1925, may be temporarily continued until November 1, 1929, for the purpose of making necessary changes and adjustments in the business operations of the parties, incident to the voiding of the contract, (2) that any contracts for outdoor advertising displays assigned to the General Company by the Bureau, pursuant to the provisions of the contract dated August 24, 1925, the execution of which shall not have been completed on or before November 1, 1929, shall, on or before said last-mentioned date, be reassigned to the Bureau.

soliciting contracts for periodical, newspaper and other forms of advertising, as well as for the display of outdoor advertising matter on display plants.

The term "solicitor," as used herein, means any person, firm or corporation engaged exclusively in the business of soliciting contracts for the display of outdoor advertising matter on "Display-Plants."

The term "General Company," as used herein, means the General Outdoor Advertising Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as well as any other corporation which is engaged in the outdoor advertising business, either as a Solicitor or as an Operator of a display plant, either as principal or agent, a majority of the voting stock of which is owned or controlled by the said General Outdoor Advertising Co., Inc., and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act on behalf of it or them, or any of them.

The term "Bureau," as used herein, means the National Outdoor Advertising Bureau, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, as well as the advertising agencies owning one or more shares of its stock or holding options to acquire such stock, which agencies are hereinafter sometimes referred to as "Bureau Members," and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act, on behalf of it or them or any of them.

II.

1. That the petition herein states a cause of action against the defendants under the Act of Congress of July 2nd, 1890, and/or the Act of Congress of October 15, 1914, as amended, and that the Court has jurisdiction of the parties and of the subject matter alleged in the petition.

2. That the contract dated August 24, 1925, a copy of which is annexed to the petition herein and marked Exhibit "A", entered into and now existing between the General Company and the Bureau, be, and the same hereby is, declared illegal and null and void, and that the General Company and the Bureau be, and they hereby are, perpetually enjoined from directly or indirectly, expressly or impliedly, further carrying out this agreement, or from entering into or performing any similar agreement, or from entering into or performing any agreement or agreements, the intent or effect of which is, or will be, to restrain or monopolize the business of soliciting contracts for outdoor advertising displays, or the execution of such contracts; provided, however, (1) that operations under the contract dated August 24, 1925, may be temporarily continued until November 1, 1929, for the purpose of making necessary changes and adjustments in the business operations of the parties, incident to the voiding of the contract, (2) that any contracts for outdoor advertising displays assigned to the General Company by the Bureau, pursuant to the provisions of the contract dated August 24, 1925, the execution of which shall not have been completed on or before November 1, 1929, shall, on or before said last-mentioned date, be reassigned to the Bureau.

3. That those recitals in which reference is made to the provisions of the said contract dated August 24, 1925, between the General Company and the Bureau (hereinbefore declared illegal and null and void), and the provisions of the several agreements designated "Option to Purchase Stock of the National Outdoor Advertising Bureau, Inc.," entered into by George C. Sherman, Frederick J. Ross, and William C. McJunkin, as trustees for the Bureau and the holders of options to purchase shares of the capital stock of the Bureau (a true copy of the form of which Option Agreement is annexed to the petition herein and marked Exhibit "B"), under which the Bureau is constituted the Bureau members' sole agent for the placing of outdoor advertising contracts, be and they hereby are declared null and void, and the Bureau and its trustees named in the Option Agreement, and each of them, be and they hereby are, perpetually enjoined from carrying out those recitals and provisions of the said option agreements, or from entering into or performing any agreement or agreements under which the Bureau shall be constituted the sole, exclusive agent of Bureau members for the placing of outdoor advertising.

4. That the Bureau be, and it hereby is, perpetually enjoined from giving or granting any preferences, priority, rebate or discrimination, in any form whatsoever, to, or in favor of, or against, the General Company, or any other person, in connection with any contract or contracts for outdoor advertising displays; or from interfering in any manner whatsoever with the selecting of display-plants which have been made by advertisers, Bureau members, or any other persons employing the Bureau's services, in their several contracts for outdoor

advertising displays; or from changing, or refusing to comply with, the instructions of such advertisers, members, or other persons, with respect to the selection of the particular display-plant or display-plants on which such contracts are to be executed; provided, however, that nothing contained in this paragraph shall prevent the Bureau or any of its representatives from making bona fide recommendations to any of its members or other persons employing its services, in response to inquiries from them, or any of them, concerning the merits of a particular display-plant, or from carrying out the instructions of any advertiser, Bureau member, or any other persons employing its services, with respect to modifying, changing or cancelling existing contracts for outdoor advertising displays which have been entered into by such advertisers, Bureau members, or other persons.

5. That the acts hereinafter in this paragraph enjoined would, if performed, violate the Act of Congress of July 2, 1890, or the Act of Congress of October 15, 1914, as amended, and are illegal and therefore the General Company be, and it hereby is, perpetually enjoined and restrained from doing, either directly or indirectly, any or all of, the following acts:

(a) Giving or granting any preference, priority, rebate, or any discrimination (except as provided in subparagraph [f] hereinafter) in any form whatsoever, to, in favor of, or against the Bureau, or any member thereof, or any person employing the services of the Bureau, or any other person, in connection with any contract or contracts for outdoor advertising displays to be executed in whole or in part on the display-plants owned or operated by the General Company.

(b) Refusing or failing to furnish or to sell advertising space on the display-plants owned or operated by the General Company or refusing or failing to permit the employment of such plants, when space thereon is available for sale or employment, with the intent or the effect of preventing competing solicitors from engaging in the solicitation and/or execution of contracts for outdoor advertising displays; provided however, that nothing herein shall prevent the General Company from refusing to sell advertising spaced based on bona fide compliance with reasonable requirements as to financial responsibility or business ethics.

(c) Requiring, or attempting to require, any person or persons to purchase, or agree to purchase, space on, or to use, or to agree to use, the display-plants of the General Company, or to employ, or to agree to employ, its services, in any place or places where the General Company operates display-plants or furnishes services in competition with competitors, in preference to the display-plants or the services of a competitor, as a condition to the making of a contract with such person or persons for the purchase of space on, or the use of, the display-plants, or any of the display-plants, of the General Company, or the employment of its services.

(d) Requiring or attempting to require as a condition to the acceptance of any contract for an outdoor advertising display to be executed in part on the display plants owned and/or operated by the General Company and in part on display plants owned and/or operated by persons other than the General Company, that the General Company shall sublet the part or parts of such contracts, or any of them, to be executed on the display-plants owned

and/or operated by persons other than the General Company; provided, however, that nothing contained in this sub-paragraph (d) shall prevent the General Company from retaining any or all of its property or property rights employed by it in negotiating for a contract for an outdoor advertising display.

(e) Inducing, or attempting to induce, national advertisers, or local representatives of such national advertisers, or solicitors, or general advertising agencies, who may have entered into, or may hereafter enter into, contracts for national outdoor advertising displays in which there has been, or may be, designated display-plants other than the display-plants of the General Company and which contracts have been, or may be assigned to, or placed with, the General Company to be "serviced" or "sub-let" to plant operators other than the General Company, to change the designation in such contracts of the display-plants other than those of the General Company, so that the contracts will provide for execution on the display-plants of the General Company or on display plants other than those originally designated in the contract.

(f) Inducing, or attempting to induce, advertisers not to employ, or to discontinue the employment of, the services of competing solicitors by granting secret rebates, or by entering into any arrangement for the formation of an advertising agency which in fact is a department of the business of an advertiser, or by making discriminations in price or service, where the purpose or the effect thereof is or may be substantially to lessen competition or tend to create a monopoly in the outdoor advertising business; provided, however, that nothing herein contained shall prevent discrimination in price between purchasers

or users of space or employers of service on account of differences in the grade, quality or quantity thereof, or that makes due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition; and provided, further, that nothing contained in this subparagraph (f) shall prevent the General Company from selecting its own customers in bona fide transactions, and not in restraint of the outdoor advertising business.

(g) Knowingly and falsely representing to persons that the quality of the services rendered, or to be rendered, by competitors of the General Company, whether display-plant operators or solicitors, is, or will be, inferior to the quality of the services rendered, or to be rendered, by the General Company, where the purpose or effect thereof is, or will be, to induce such persons not to purchase space on, or to use the display-plants of, or employ the services of, such competitors of the General Company; provided, however, that nothing herein shall be construed to prevent the making of bona fide representations concerning the merits of the quality of the services rendered, or to be rendered, by the General Company.

(h) Adopting or carrying out a practice, either generally or with respect to any particular community, of interfering with competitors, operators of display-plants, with the purpose or knowingly with the effect of excluding such competitors from carrying on their regular course of business; provided, however, that nothing in this sub-paragraph (h) shall be construed to prevent the General Company from making offers for leases or other-

wise conducting its business operations in good faith to meet competition.

(i) Acquiring, either directly or indirectly, the ownership or control of any additional display-plant or display-plants (whether now in existence or hereafter to come into existence), either by acquisition of shares of stock, purchase of assets or otherwise, or constructing any additional display-plant or display-plants (except by way of replacement of an existing plant now owned by the General Company), where the purpose of acquiring or constructing such additional display-plant or display-plants is primarily to exclude competitors from engaging in or continuing to engage in the outdoor advertising industry.

6. That the election of defendant George W. Kleiser as a member of the Board of Directors of the General Company be, and it hereby is, declared a violation of Section 8 of the said Act of Congress of October 15, 1914; and it is ordered that forthwith the said George W. Kleiser resign his office as a director of the said General Company; and it is further ordered that the said George W. Kleiser be, and he hereby is, perpetually enjoined from accepting office as a director of the said General Company while he shall hold office as a director of Foster and Kleiser Company, or of any other corporation with which the General Company is, or may be, in competition in the outdoor advertising business.

7. That within one year from the entry of this decree the defendants Kerwin H. Fulton, George L. Johnson

and George Armsby, individually and as voting trustees, be, and they hereby are, ordered and directed to cause the Voting Trust Agreement, dated as of February 26, 1925, referred to in the petition herein, to be terminated; and after the expiration of one year from the entry of this Decree these defendants and each of them, be, and they hereby are, njoined from further performing this Voting Trust Agreement, either directly or individually, or from doing any act pursuant thereto, excepting only the transfer and delivery of certificates representing the shares of common stock in the General Company to such persons as are entitled to receive the same in exchange for voting trust certificates now issued and outstanding.

8. That the terms of this decree shall be binding upon and shall extend to each and every one of the successors in interest of any and/or all of the defendants herein, and to any and all corporations, co-partnerships and/or individuals who may hereafter acquire ownership or control, directly or indirectly, of the stock or of the property, business and good will of any of the corporate defendants, whether by merger, consolidation, reorganization, transfer of assets or otherwise.

9. That the petition herein be and it hereby is dismissed, without prejudice, as to the defendants Outdoor Advertising Association of America, Inc., Foster and Kleiser Company and Foster and Kleiser Investment Company.

10. That jurisdiction of this cause and of the defendants (except as to those defendants against whom the petition is dismissed) be, and it hereby is, retained for the following purposes:

(a) Enforcing this decree;

(b) Enabling the petitioner to apply to the Court for a modification or enlargement of any provisions of this decree, and for other and further relief on the ground that the decree is inadequate; and

(c) Enabling the defendants or any of them to apply for a modification of any provision of this decree, on the ground that they have become inappropriate or unnecessary.

11. That the petitioner shall recover its taxable costs.

(Signed) JULIAN W. MACK,
U. S. C. J.

Dated: New York, May 7, 1929.

3.02 P. M.

We hereby consent to the making and entry of the foregoing decree and waive notice of taxation of costs.

UNITED STATES OF AMERICA,

(Signed) HORACE R. LAMB,
(Signed) BRECK P. McALLISTER,

Special Assistants to the
Attorney General.

GENERAL OUTDOOR ADVERTISING Co., Inc.,

(Signed) GEO. F. HURD,
Its Solicitor.

NATIONAL OUTDOOR ADVERTISING BUREAU, INC.,

(Signed) D. D. WEVER,

(Signed) E. F. COLLADAY,

Its Solicitors.

OUTDOOR ADVERTISING ASSOCIATION OF AMERICA,
INC.,

(Signed) GEORGE WHARTON PEPPER,

(Signed) E. ALLEN FROST,

Its Solicitors.

FOSTER AND KLEISER COMPANY,
FOSTER AND KLEISER INVESTMENT COMPANY,
GEORGE W. KLEISER,

(Signed) DAVID L. PODELL,

Their Solicitor.

KERWIN H. FULTON,

GEORGE JOHNSON,

GEORGE ARMSBY,

Individually and as Voting Trustees,

(Signed) GEO. F. HURD,

Their Solicitor.

Filed: January 11, 1935.

The petition and final decree in the case of United States of America vs. Foster & Kleiser Company, in Equity Case No. R-31-M, were thereupon received in evidence and marked Plaintiff's Exhibit 220.

Said Plaintiff's Exhibit 220 is in words and figures as follows, to wit:

[PLAINTIFF'S EXHIBIT No. 220.]

In the District Court of the United States for the Southern
District of California, Central Division

Equity No. R-31-M

United States of America, petitioner

v.

Foster & Kleiser Company, George W. Kleiser, Walter F.
Foster, August F. Lausen, Jr., and Restop Realty
Company, defendants

PETITION

The United States of America by Samuel W. McNabb,
United States Attorney for the Southern District of
California, acting under the direction of the Attorney
General, brings this proceeding in equity against:

1. Foster & Kleiser Company, a corporation organized
and existing under the laws of Nevada, engaged in the
business of outdoor advertising.

2. George W. Kleiser, its President, a citizen of the
United States and a resident of San Francisco, California.

3. Walter F. Foster, its Vice-President, a citizen of
the United States and a resident of San Francisco, Cali-
fornia.

4. August F. Lausen, Jr., its General Manager, a citi-
zen of the United States and a resident of San Francisco,
California.

5. Restop Realty Company, a corporation organized and existing under the laws of California engaged in the business of owning, holding and leasing real estate.

6. The defendant Foster & Kleiser Company has its principal place of business in San Francisco, California and maintains branch offices in Oakland, Fresno, Los Angeles, Long Beach and San Diego, California; in Seattle and Tacoma, Washington; and in Portland, Oregon.

7. Each of the individual defendants have, during the time herein mentioned, been actively engaged in conducting the business and affairs of Foster & Kleiser Company including the interstate trade and commerce in outdoor advertising hereinafter described.

8. The defendants George W. Kleiser and Walter F. Foster have together owned or controlled more than fifty per cent (50%) of all the voting stock of defendant Restop Realty Company and have together determined the policies and dominated and controlled the business and affairs of said corporation.

9. All allegations in this petition are intended to include the present tense except where otherwise stated.

10. The District of Columbia and territories of the United States are intended to be included within the word state or states used herein except when otherwise shown.

11. For many years last past, up to and including the date of the filing of this petition, a number of persons, firms and corporations including Foster and Kleiser Company have been continuously engaged in the business of outdoor advertising, that is to say, displaying on out of door structures advertising matter designed principally to promote the sale of certain goods, wares and merchandise

throughout the United States. In conducting this business the said persons, firms and corporations, including Foster & Kleiser Company, have owned and leased parcels of real estate in desirable locations in cities, towns and rural districts throughout the States of Washington, Oregon, California and Arizona which states are hereinafter collectively referred to as the Pacific Coast Area. They have erected and maintained on said parcels of real estate numerous structures of wood and metal designed to display advertisements.

12. Large numbers of said advertisements have been in the form of lithographs which have been pasted or otherwise affixed to the face of said structures. These lithographs have been manufactured or printed by certain individuals, firms and corporations hereinafter referred to as lithographers located in states other than those which comprise the Pacific Coast Area, principally in Kentucky, Ohio and Illinois. Foster & Kleiser Company has been soliciting and entering into many thousands of contracts for the display of advertising matter on said structures with persons, firms and corporations located throughout the United States and hereinafter referred to as advertisers, desirous of promoting the sale of their respective goods, wares and merchandise throughout the Pacific Coast Area. For the most part said advertisers have been located in States other than those comprising the Pacific Coast Area and are too numerous otherwise to identify herein. Many thousands of such contracts and arrangements have been made and are now being performed between Foster & Kleiser Company and said advertisers for the shipment and transportation of lithographs from said lithographers to the said branches main-

tained as aforesaid by Foster & Kleiser Company throughout the Pacific Coast Area. Pursuant to said contracts and arrangements many thousands of lithographs have been and are being shipped and transported by said lithographers or advertisers located in places other than those comprising the Pacific Coast Area to the said branches maintained by Foster & Kleiser Company throughout the Pacific Coast Area.

13. Large numbers of said advertisements displayed as aforesaid on said structures have been painted directly on the face of the said structures through the medium of designs or stencils. Foster & Kleiser Company has been manufacturing the paint used on its structures as aforesaid at a factory maintained by it for this purpose in San Francisco, California; and has been shipping and transporting and causing the transportation and shipment of the said paint from its factory in California into states other than that in which it has been manufactured as aforesaid. Foster & Kleiser Company has also been transporting and shipping and causing the transportation and shipment of the said designs and the said stencils used in painting the said structures from the several states in which they have been respectively manufactured into states other than those of manufacture.

14. Foster & Kleiser Company has also been engaged in manufacturing at its several branches throughout the Pacific Coast Area so-called hand painted posters and has been shipping and transporting and causing the shipment and transportation of same from the state in which they have been manufactured as aforesaid to states other than those of manufacture.

15. Foster & Kleiser Company has also been engaged in manufacturing and fabricating at its said branches maintained throughout the Pacific Coast Area metal parts used in building the aforesaid structures, including metal sections and braces; and has been shipping and transporting and causing the shipping and transportation of same from the branches at which they have been respectively manufactured as aforesaid to states other than those of manufacture.

16. The said lithographs, hand-painted posters, paint, designs, stencils and metal parts which have been shipped and transported as aforesaid by Foster & Kleiser Company from the states where they have been respectively manufactured into states other than those of manufacture have been used as the media to convey information concerning the goods, wares and merchandise of advertisers located throughout the United States to prospective buyers located throughout the Pacific Coast Area and the contracts entered into by Foster & Kleiser Company with advertisers as aforesaid have been made for the purpose of having the information contained in said lithographs and painted posters transported from the state or states in which said lithographs and painted posters have been respectively made to states other than those where they have been so made.

17. Petitioner therefore alleges that said persons, firms and corporations including Foster & Kleiser Company have been and now are engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against

Unlawful Restraints and Monopolies" commonly known as the Sherman Antitrust Act.

18. Foster & Kleiser Company has owned or controlled approximately eighty percent (80%) of the outdoor advertising structures located in the Pacific Coast Area and has transacted approximately ninety percent (90%) of the total business of outdoor advertising in the Pacific Coast Area.

19. During the time herein mentioned the defendants have monopolized and attempted to monopolize and now are monopolizing and attempting to monopolize the said interstate trade and commerce in outdoor advertising in the manner and by the means hereinafter alleged.

20. By acquiring the ownership or control of numerous outdoor advertising companies including the Lafon System, Inc., of Los Angeles, California and The Coast Advertising Company of Oakland, California with the purpose, intent and effect of creating a monopoly of the said interstate trade and commerce in outdoor advertising throughout the Pacific Coast Area.

21. By formulating, adopting and practicing the policy, either generally or with respect to particular communities, of interfering with competitors for the purpose of preventing said competitors from carrying on their lawful business and the aforesaid interstate trade and commerce in outdoor advertising in competition with Foster & Kleiser Company by the following means, to wit:

Offering to pay and in fact paying for outdoor advertising sites amounts in excess of their true worth and value; making fictitious offers to purchase or lease outdoor advertising sites at amounts in excess of their true

worth and value; attempting to cause the cancellation and in fact causing the cancellation of leases to which competitors are a party by false representations that the said sites are desired for other than advertising purposes; attempting to lease and in fact leasing more outdoor advertising sites than are reasonably required for the proper conduct of the outdoor advertising business; leasing and attempting to lease outdoor advertising sites which are never intended to be or in fact are used for any purpose; leasing and attempting to lease outdoor advertising sites on the understanding that same will not be used for outdoor advertising purposes; continuously soliciting, obtaining and reporting detailed information regarding outdoor advertising sites leased by competitors; physically obstructing, concealing, covering, obliterating, destroying and otherwise impairing the visibility of outdoor advertising structures owned, operated or controlled by competitors; employing agents for the purpose of obtaining information and cooperation from city and county officials regarding outdoor advertising sites owned or leased or intended to be owned or leased by competitors; and by use of the means above described the said competitors have in fact been prevented from carrying on their lawful business and the aforesaid interstate trade and commerce in outdoor advertising in competition with Foster & Kleiser Company.

22. By formulating, adopting and practicing the policy, either generally or with respect to particular communities, of contracting with advertisers for the display of outdoor advertising matter at unfair or discriminatory prices and under unfair or discriminatory terms and conditions; that is to say, charging different prices for the same product

to advertisers occupying substantially the same positions in the trade for the purpose and with the intent of excluding competitors of Foster & Kleiser Company from carrying on the outdoor advertising business and the aforesaid interstate trade and commerce in competition with Foster & Kleiser Company and said competitors were thereby in fact excluded from carrying on the said business and interstate trade and commerce in competition with Foster & Kleiser Company.

23. By inducing or attempting to induce customers of competitors to breach their contracts with such competitors by changing and reducing bids for the display of outdoor advertising matter below the prices originally offered by defendant Foster & Kleiser Company and below the prices originally offered by competitors of Foster & Kleiser Company; and said customers thereby did in fact breach their said contracts with said competitors.

24. By making false and unfair statements regarding the business, business standing, credit and integrity of competitors of defendant Foster & Kleiser Company and regarding the quality, durability and workmanship of outdoor advertising material furnished by said competitors and regarding the value and desirability of outdoor advertising sites owned or leased by said competitors for the purpose of inducing or attempting to induce customers or competitors to breach their contracts with such competitors or of preventing or attempting to prevent the display of outdoor advertising matter by competitors of Foster & Kleiser Company; and said customers of competitors did thereby in fact breach many of their said contracts and did refrain from contracting for the display of outdoor advertising matter with said competitors.

25. By granting preferences, priorities, rebates and discriminations relative to prices and terms of contracts for the display of outdoor advertising matter in favor of certain selected advertisers for the purpose of preventing competitors of Foster & Kleiser Company from carrying on their lawful business and the said interstate trade and commerce in outdoor advertising; and said competitors were thereby prevented from carrying on their said business and the said interstate trade and commerce.

26. By giving free display of outdoor advertising matter to certain advertisers for the purpose of preventing competitors of defendant Foster & Kleiser Company from transacting the outdoor advertising business and the said interstate trade and commerce in competition with defendant Foster & Kleiser Company; and said competitors were thereby in fact prevented from transacting the said business and the aforesaid interstate trade and commerce in competition with defendant Foster & Kleiser Company.

27. By compelling and attempting to compel owners of outdoor advertising structures to sell their said structures to Foster & Kleiser Company on such terms as might be determined and dictated by Foster & Kleiser Company by threatening that unless such sales were made Foster & Kleiser Company would construct and operate outdoor advertising structures in competition with the said owners.

28. By paying to the National Outdoor Advertising Bureau, an organization composed of persons, firms and corporations engaged in the business of soliciting advertising, a commission of sixteen and two thirds percent ($16\frac{2}{3}\%$) on all contracts for outdoor advertising awarded or caused to be awarded to Foster & Kleiser Company by

the said bureau and paying only ten percent (10%) commission to other soliciting agencies occupying relatively the same position in the trade for the purpose of inducing the said bureau to award all such advertising contracts to Foster & Kleiser Company to the exclusion of its competitors.

29. Petitioner alleges that the effect of each of the acts of defendants herein described and of the monopoly thereby effected has been to place the business of outdoor advertising in interstate commerce throughout the Pacific Coast Area under the exclusive domination and control of defendants and to stifle and eliminate all competition among those persons, firms and corporations engaged in the business of outdoor advertising in interstate commerce as aforesaid.

30. Petitioner further alleges that each of said acts of defendants has been in and of itself unreasonable, unwarranted and oppressive.

31. Petitioner further alleges that the purpose and intent of defendants in performing each of the said acts has been to monopolize the said interstate trade and commerce in outdoor advertising throughout the Pacific Coast Area and to eliminate all competition in the course of the said interstate trade and commerce.

PRAYER

Wherefore petitioner prays:

1. That writs of subpoena issue directed to each and every defendant commanding it or him to appear herein and answer under oath the allegations contained in the foregoing petition and to abide by and perform such acts and decrees as the court may make in the premises.

2. That the attempt to monopolize and the monopoly of interstate trade and commerce in outdoor advertising as described herein be adjudged illegal and in violation of the Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act.

3. That the defendants and each of them and each and all of the respective officers and directors and each and all of the respective agents, servants, employees and all persons acting or claiming to act on behalf of the defendants or any of them be perpetually enjoined and restrained from continuing to carry out directly or indirectly, expressly or impliedly, the monopoly of the said interstate trade and commerce in outdoor advertising described herein and from entering into and carrying out directly or indirectly expressly or impliedly any monopoly or attempt to monopolize similar to that alleged herein to be illegal.

4. That the corporate defendants their respective officers, agents, servants and employees and all persons acting or claiming to act on their behalf be enjoined from performing or continuing to perform any and all of the acts referred to in paragraphs 20 to 28 inclusive of this petition as means of effectuating the said monopoly.

5. That the defendants Foster & Kleiser Company and Restop Realty Company be required to divest themselves of all right, title and interest in and to the assets, affairs and business of the Lafon System Inc., of Los Angeles, California.

6. That the defendants Foster & Kleiser Company and Restop Realty Company, their respective officers, agents, employees and all persons and corporations acting under,

through or on behalf of them or either of them be perpetually enjoined, restrained and prohibited from acquiring the assets, affairs or business and from acquiring, receiving, holding, voting or in any manner acting as the owner of the whole or of any part of the stock or other share capital of any company engaged directly or indirectly in the outdoor advertising business until the further order of this court.

7. That the petitioner have such other and further relief as may to the court seem proper.

Samuel W. McNabb,
United States Attorney for the Southern District
of California.

William D. Mitchell,
William D. Mitchell,
Attorney General.

John Lord O'Brian,
John Lord O'Brian,
The Assistant to the Attorney General.

John Harlan Amen,
John Harlan Amen,
Special Assistant to the Attorney General.

Albert J. Law,
Albert J. Law,
M. T. F.
Special Assistant to the Attorney General.

District of Columbia, ss:

John Harlan Amen, being duly sworn, says that he is a Special Assistant to the Attorney General of the United States, that he has read the foregoing petition and knows the contents thereof and that he is informed and verily believes the allegations thereof to be true.

John Harlan Amen.

John Harlan Amen

Subscribed and sworn to before me this 16th day of April, 1930.

Annebel L. Tillett,
Notary Public.

Filed Apr. 22 1930, R. S. Zimmerman, Clerk, By
Edmund L. Smith, Deputy Clerk.

In the District Court of the United States in and for the
Southern District of California Central Division

IN EQUITY, NO. R-31-M

UNITED STATES OF AMERICA, Petitioner

—against—

FOSTER & KLEISER COMPANY, GEORGE W.
KLEISER, WALTER F. FOSTER, AUGUST F.
LAUSEN, Jr., and RESTOP REALTY COM-
PANY, Defendants.

FINAL DECREE

The United States of America filed its petition herein on April 22, 1930, and each of the defendants having duly appeared by their respective counsel, the United States of America, by its counsel moved the Court for an injunction as prayed in the petition and each of the defendants consented to the entry of this decree without contest and before any testimony had been taken.

Wherefore it is ordered, adjudged and decreed as follows:

1. That the Court has jurisdiction of the subject matter hereof and of all persons and parties hereto and that the petition states a cause of action against the defendants under the Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act.

2. That the monopoly of and the attempt to monopolize interstate trade and commerce in outdoor advertising in the manner and by the means described in the petition herein is hereby declared illegal and in violation of the said Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act.

3. That the defendants, and each of them, and each and all of the respective officers and directors of the corporate defendants, and each and all of the respective agents, servants, employees, and all persons acting, or claiming to act, on behalf of the defendants or any of them, be and they hereby are, perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the said attempt to monopolize and the said monopoly of the interstate trade and commerce in outdoor advertising as described in the petition herein and from entering into, or carrying out, directly or indirectly, expressly or impliedly, any similar monopoly or attempt to monopolize of like character or effect.

4. That within thirty days after the entry of this decree the defendant, Foster & Kleiser Company, be required to offer for sale at all times within the two years next ensuing all of its right, title and interest in and to such of the assets, affairs and business of the La Fon System Inc., of Los Angeles, California, as have been heretofore acquired by said defendant, in their entirety, as the same may from time to time exist at the following prices and times, to wit: at an initial price of One Hundred Fifty Two Thousand Nine Hundred Fifteen and 88/100 (\$152,915.88) Dollars, up to and including August 31, 1931; at a price of One Hundred Thirty Eight Thousand

Three Hundred Twenty Eight and $16/100$ (\$138,328.16) Dollars from September 1, 1931, up to and including the last day of February, 1932; at a price of One Hundred Twenty Six Thousand Nine Hundred Seventy and $08/100$ (\$126,970.08) Dollars from March 1, 1932, up to and including August 31, 1932; at a price of One Hundred Sixteen Thousand Six Hundred Ninety Five and $86/100$ (\$116,695.86) Dollars from September 1, 1932 up to and including the last day of February, 1933; and thereafter up to and including the date of expiration of the said two year period at a price of One Hundred Seven Thousand Three Hundred Fifty Nine and $40/100$ (\$107,359.40) Dollars; each of which prices the defendants, Foster & Kleiser Company, George W. Kleiser, and August F. Lausen, Jr., and each of them, expressly represents and warrants as constituting a fair and equitable valuation of the said assets, affairs and business as the same exist or may exist on the aforementioned dates; and to publish notice of said offer of sale at least once every six months during the said two year period in at least two newspapers having a general circulation in the City of Los Angeles, California; and to file with the Clerk of this Court, affidavits of each such publication within five days after each such publication has been made; and if, as and when the said offer is accepted by any responsible individual, partnership, corporation or other party at the price then applicable as aforesaid to transfer all of said assets, affairs and business of the said La Fon System Inc., to such individual, partnership, corporation or other party upon

the payment of said purchase price and the assumption of leasehold and advertising contract liabilities attaching to said assets, affairs and business.

The defendants will maintain at all times during the said two year period for inspection by prospective purchasers a complete inventory of the said assets, affairs and business of the Lafon System Inc., and will report to this Court each and every offer or acceptance made by any prospective purchaser within five days after any such offer or acceptance has been made.

5. That the corporate defendants, their respective officers, agents, servants and employees when acting directly or indirectly for or on behalf or in the interest of said corporate defendants or either of them and all other persons acting or claiming to act on behalf of such corporate defendants or either of them be perpetually enjoined from acquiring the assets, affairs or business and from receiving, holding or voting or in any manner acting as the owner of the whole or of any part of the stock or other share capital of any company which competes with the corporate defendants or any of them in the outdoor advertising business described in the petition herein until further order of this Court.

6. That the corporate defendants, their respective officers, agents, servants and employees, and all persons acting or claiming to act on behalf of them or any of them, be enjoined from the following:

(a) Formulating, adopting and practicing the policy, either generally or with respect to particular communities,

of interfering with competitors for the purpose of preventing said competitors from carrying on their lawful business and the aforesaid interstate trade and commerce in outdoor advertising in competition with Foster & Kleiser Company by any of the following means, or by any means similar thereto, to wit:

Offering to pay or in fact paying for outdoor advertising site amounts in excess of their true worth and value; making fictitious offers to purchase or lease outdoor advertising sites at amounts in excess of their true worth and value; attempting to cause the cancellation or in fact causing the cancellation of leases to which competitors are a party by false representations that the said sites are desired for other than advertising purposes; attempting to lease or in fact leasing more outdoor advertising sites than are reasonably required for the proper conduct of the outdoor advertising business for the purpose or with the intent of excluding competitors of the corporate defendants from carrying on their respective businesses in competition with the corporate defendants; leasing or attempting to lease outdoor advertising sites without using the same or intending to use the same for any purpose reasonably necessary or incidental to the proper conduct of the outdoor advertising business for the purpose or with the intent of excluding the competitors of the corporate defendants from carrying on their respective businesses in competition with the corporate defendants; leasing or attempting to lease outdoor advertising sites

on the undersanding that same will not be used for outdoor advertising purposes with the intent or for the purpose of excluding competitors of the corporate defendants from carrying on their respective businesses in competition with the corporate defendants; continuously soliciting, obtaining and reporting detailed information regarding outdoor advertising sites leased by competitors by any illegal or improper means or in any illegal or improper manner and utilizing the said information for the purpose or with the intent of excluding competitors of the corporate defendants from transacting their respective businesses in competition with the corporate defendants; physically obstructing, covering, obliterating, destroying or otherwise impairing the visibility of outdoor advertising structures owned, operated or controlled by competitors; but this shall not prevent the defendant, Foster & Kleiser Company, from erecting its advertising structures upon its leased or owned advertising sites in the lawful exercise of its property rights in good faith and not for the purpose or with the intent of excluding competitors of the corporate defendants from carrying on their respective businesses in competition with the corporate defendants; employing agents for the purpose of obtaining information and cooperation from city and county officials regarding outdoor advertising sites owned or leased or intended to be owned or leased by competitors and utilizing the said information or cooperation for the purpose or with the intent of excluding competitors of the corporate

defendants from transacting their respective businesses in competition with the corporate defendants.

(b) Formulating, adopting and practicing the policy, either generally or with respect to particular communities, of contracting with advertisers for the display of outdoor advertising matter at unfair or discriminatory prices and under unfair or discriminatory terms and conditions; that is to say, charging different prices for the same product to advertisers occupying substantially the same positions in the trade for the purpose and with the intent of excluding competitors of Foster & Kleiser Company from carrying on the outdoor advertising business and the aforesaid interstate trade and commerce in competition with Foster & Kleiser Company.

(c) Knowingly inducing or attempting to induce customers of competitors to breach their contracts with such competitors by changing and reducing bids for the display of outdoor advertising matter below the prices originally offered by defendant Foster & Kleiser Company and below the prices originally offered by competitors of Foster & Kleiser Company.

(d) Knowingly making false and unfair statements regarding the business, business standing, credit and integrity of competitors of defendant, Foster & Kleiser Company, and regarding the quality, durability and workmanship of outdoor advertising material furnished by said competitors and regarding the value and desirability of outdoor advertising sites owned or leased by said com-

petitors for the purpose of inducing or attempting to induce customers of competitors to breach their contracts with such competitors or of preventing or attempting to prevent the display of outdoor advertising matter by competitors of Foster & Kleiser Company.

(e) Granting preferences, priorities, rebates and discriminations relative to prices and terms of contracts for the display of outdoor advertising matter in favor of certain selected advertisers for the purpose of preventing competitors of Foster & Kleiser Company from carrying on their lawful business and the said interstate trade and commerce in outdoor advertising.

(f) Giving free display of outdoor advertising matter to certain advertisers for the purpose of preventing competitors of defendant Foster & Kleiser Company from transacting the outdoor advertising business and the said interstate trade and commerce in competition with defendant Foster & Kleiser Company.

(g) Compelling or attempting to compel owners of outdoor advertising structures to sell their said structures to Foster & Kleiser Company on such terms as may be determined and dictated by Foster & Kleiser Company by threatening that unless such sales are made Foster & Kleiser Company will construct and operate outdoor advertising structures in competition with the said owners.

(h) Paying to any soliciting agency whether individuals, partnerships, associations or corporations any higher rate of commissions on contracts for outdoor advertising

awarded or caused to be awarded to Foster & Kleiser Company than it pays to other soliciting agencies occupying relatively the same position in the trade for the purpose of inducing such soliciting agency to award all such advertising contracts to the Foster & Kleiser Company to the exclusion of its competitors. Provided that nothing contained in the foregoing subdivisions b, e and f of paragraph 6 hereof shall prevent discrimination in price between purchasers of outdoor advertising on account of difference in grade, quality or quantity of such outdoor advertising or that makes only due allowance for difference in the cost of sale or transportation or discrimination in price in the same or different communities made in good faith to meet competition and providing further that nothing in the said subdivisions shall prevent the defendants from selecting their own customers in bona fide transactions and not in restraint of trade.

7. That the terms of this decree shall be binding upon and shall extend to each and every one of the successors in interest of any and all of the corporate defendants herein and to any and all corporations, co-partnerships and individuals who may acquire the ownership and control, directly or indirectly of the property, business and assets of the corporate defendants whether by merger, consolidation, reorganization or otherwise.

8. That jurisdiction of this cause be and it hereby is retained for the purpose of enforcing this decree or modifying this decree.

9. That the Petitioner have and recover from the defendants the costs expended in this cause, taxed at \$35.80.

DATED: Los Angeles, California: March 13, 1931.

Entry consented to.

WM. P. JAMES

United States District Judge.

SAMUEL W. McNABB

United States Attorney.

ALBERT J. LAW

Special Ass't to the Attorney General.

Entry consented to by defendants by their respective counsel.

MORRISON, HOHFELD FOERSTER,
SHUMAN & CLARK,

by Roland C. Foerster

Attorneys for defendants, Foster & Kleiser Company.

George W. Kleiser and August F. Lausen, Jr.

NORMAN STERRY

GIBSON, DUNN & CRUTCHER

by Norman S. Sterry

Attorneys for defendants, Restop Realty Company and

Walter F. Foster.

Decree entered and recorded Mar 13 1931 R. S. Zimmerman, Clerk, By Murray E. Wire, Deputy Clerk.

(INDORSED) FILED MARCH 13, 1931 R. S. ZIMMERMAN, Clerk By Murray E. Wire, Deputy Clerk.

No. 5673-C Special Site, vs. Foster & Kleiser Plf. Exhibit No. 220, Filed 1/11 1935 R. S. Zimmerman, Clerk, By Cross, Deputy Clerk.

The court thereupon instructed the jury as follows:

Now, gentlemen of the jury, I will take occasion to instruct you at this time that the law under which we are proceeding here, in certain circumstances, which do not exist in this case, makes the litigation between the United States Government and the defendants in this action admissible. It has a certain effect. The conditions, however, do not exist in this case which render them admissible. Therefore, if any of these documents should be read or should be referred to, you will understand that they are in this case, not as evidence of any of the facts that are in issue here, except one, and that I will refer to in a moment. The plaintiff is not to benefit, nor the defendant to suffer, by reason of the fact that the United States Government has ever engaged in any sort of litigation with these defendants, or any of them. The purpose for which they are admitted is solely to establish the period of time within such actions were pending. That, naturally, is a very minor factor in the case, at least so far as the merits of the case are concerned, it has no effect at all, and does not establish anything one way or the other. You are therefore to understand, and are instructed that these records in the two civil cases have been admitted solely and only for the purpose of showing the time when the issues were pending in the two cases, were actually pending, and for no other purpose, and the admission in evidence is not to be regarded by you as evidence of anything other than that particular single fact, to wit, the period of time during which the litigation between the government and some of the defendants in this action was pending. The record in the New York case involves only Foster & Kleiser Company and not the Restop Realty Company.

Counsel for plaintiff thereupon read to the jury the caption and the paragraphs numbered I, II, III and IV, respectively, of Plaintiff's Exhibit 218.

Whereupon the court of its own motion interrupted the further reading of said petition, Plaintiff's Exhibit No. 218, and excused the jury until the following morning. A discussion was then engaged in between court and counsel, in the absence of the jury, as to the admissibility of Plaintiff's said Exhibit No. 218 already in evidence. The court reconvened on the following morning, January 11, 1935, the jury being present, and the trial proceeded as follows in the presence and hearing of the jury.

THE COURT: Note the presence of all of the jury.

THE CLERK: Yes, your Honor. Your Honor, the record should show, I understand, that this final decree should be Exhibit No. 219, that is, in the Southern District of New York.

THE COURT. Yes, all right. With respect to the questions suggested by the court yesterday afternoon, the order heretofore made admitting the so-called—give me those initials again.

MR. CLARK: G. O. A., your Honor.

THE COURT: Yes. —is set aside and, the document having been offered by the plaintiff and objected to by the defendant, the ruling will be withheld on that. With respect to the other decree, that is admitted for the purposes mentioned.

MR. GLENSOR: That is, the Southern California case?

THE COURT: Yes.

MR. GLENSOR: Yes.

THE COURT: The James case.

MR. CLARK: If your Honor please—

THE COURT: Do I state the situation correctly?

MR. CLARK: I think so. May I have an exception to your Honor's ruling admitting the second matter?

THE COURT: Yes, of course you have that.

MR. CLARK: On the grounds heretofore stated?

THE COURT: Yes.

MR. CLARK: Irrelevant and *res inter alios acta*.

THE COURT: That is understood.

MR. GLENSOR: Now, the Southern California complaint is admitted?

THE COURT: Yes, for the purpose mentioned.

MR. GLENSOR: Yes.

THE COURT: Which, as you understand my view, is a matter for the information of the court, in its judgment, and for its effect upon the statute of limitations only.

MR. GLENSOR: Yes. A reading of the documents in the Southern California case will not be permitted?

THE COURT: Will not be permitted. You can make the offer and take an exception.

MR. GLENSOR: Well, I offer to read the complaint and the decree in the case of the United States of America vs. Foster & Kleiser Company, George W. Kleiser, Walter F. Foster, August F. Lausen, and Restop Realty Company, defendants, No. R. 31-M in this court.

THE COURT: Yes. Your offer is refused.

MR. GLENSOR: Exception.

THE COURT: The court declines the reading of the document.

MR. GLENSOR: All right.

THE COURT: Exception to the plaintiff.

MR. GLENSOR: Yes, I noted an exception. Now, what is the situation? I understand that counsel has rather strenuously urged that the court takes judicial notice of the Southern California case, it being a part of this court's records. I am far from satisfied that that is the law. If, however, counsel cares to stipulate that the matter is before the court for those purposes without any further reading or offering, I will stop.

MR. CLARK: Excuse me just a moment, your Honor. Well, if it may be understood that we do that without waiving our exception, that is perfectly satisfactory.

THE COURT: Yes.

MR. CLARK: The court knows judicially, and should refuse evidence.

THE COURT: Very well.

MR. GLENSOR: Now, may I look at my notes just a moment, please? I think we are through.

THE CLERK: Your Honor, do I understand that the petition and final decree in the New York case are both for identification at this time?

THE COURT: They are offered and have not yet been admitted.

MR. STERRY: Then they should be for identification?

MR. CLARK: It is satisfactory to us, your Honor, if they are marked for identification at this time.

THE COURT: That is probably the regular way of doing it.

THE CLERK: Then they will be Plaintiff Exhibits 218 and 219 for identification respectively.

MR. GLENSOR: The plaintiff rests.

At the request of Mr. Clark the jury was excused and the following proceedings were had in the absence of the jury:

Whereupon the defendants Foster & Kleiser Company and Restop Realty Company severally moved the court to direct the jury to return a verdict for the defendants, and each of them, on the following grounds, to-wit:

First, that no interference with interstate commerce in any way whatsoever has been shown, even prima facie, or by a scintilla of evidence by the plaintiff; and secondly, even assuming that any interference with interstate commerce or any restraint upon interstate trade or commerce has been shown prima facie, there has been an absolute failure of proof that damage has resulted therefrom to the plaintiff.

The court thereupon denied said motions, and each of them.

To which rulings of the court the defendants and each of them, duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 210.

(Testimony of August F. Lausen, Jr.)

January 15, 1935.

Thereupon

AUGUST F. LAUSEN, JR.,

was called as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I am employed by Foster & Kleiser Company and have been since 1910. I have been a stockholder in the company since 1920. I first entered the employ of Foster & Kleiser in Seattle as office manager. Thereafter I was employed at Tacoma, Washington, as branch manager for approximately four years. When I went with Messrs. Foster and Kleiser they were doing business under the corporate name of Foster & Kleiser, Inc. At that time they had a branch at Portland, Oregon, and they had operating bases at Tacoma and Bellingham. Seattle was their headquarters.

Our sales organization located at Seattle, and Portland, developed the potential business located in those territories. Mr. Foster and Mr. Kleiser made trips to California and to the East to develop our business with advertisers located there.

At that time neither Foster & Kleiser, Inc. nor Foster & Kleiser individually had any plants outside the states of Washington and Oregon. That situation continued until 1915.

In the latter part of 1914, J. Charles Green, who operated the plant of the J. Charles Green Company at

(Testimony of August F. Lausen, Jr.)

San Francisco, died and left his business in a very unsettled state. His outdoor advertising business was bankrupt, in the hands of creditors, and the service was deteriorating to a very low degree. The poor condition of the Green plant affected the outdoor advertising business in our plant at Tacoma. In addition, there was a situation in Los Angeles which seriously affected us in Seattle. The ordinances there were such that they, in effect, prevented the advertiser from really getting the service that he wanted in the Los Angeles territory. If he could not get it in the Los Angeles territory and he wanted it throughout the Coast, he refrained from placing his appropriation. The condition of the Green plant at San Francisco was such that no one wanted to buy that class of service. Even though we were delivering a higher class of service than that, the man who was located in San Francisco felt that in all probability he would get the same class of service in other places.

I know that neither Foster and Kleiser individually nor the corporation Foster & Kleiser, Inc. had any desire to come into San Francisco and purchase the Green assets.

In the construction of our plant in the Northwest, Foster & Kleiser, Inc. followed the standards that were laid down by the Associated Bill Posters and Distributors of the United States and Canada. The function of that organization was to have its members build their plants in accordance with the plans and specifications that had been developed by that association for use by all its members throughout the United States, so that there would be a uniformity of plants and service. J. Charles Green had not maintained his plant according to the latest

(Testimony of August F. Lausen, Jr.)

specifications under which we were then operating. When I came to California I was made the manager of the corporation that was then formed to take over the assets of the J. Charles Green Company in San Francisco. That corporation was Foster & Kleiser of California. It stayed in business about one year and was succeeded by Foster & Kleiser Company, which is the defendant in this action. It took over the assets of Foster & Kleiser of California which were at San Francisco and the assets of Foster & Kleiser, Inc. which were in Oregon and Washington in the cities I mentioned.

Generally speaking, when I took up my duties here with Foster & Kleiser of California, the condition of J. Charles Green with respect to leases and lease rights was very bad. There were practically no leases in existence. The structures were built on locations purely by sufferance or by a verbal permit. He had only a very small percentage of written leases. That condition prevailed generally in San Francisco with the J. Charles Green locations. As a result of that condition, a concern by the name of Ellert & Stevens secured many of the locations which were occupied by structures that had belonged to J. Charles Green Company. Ellert & Stevens had formerly been employed by the J. Charles Green Company. When Foster & Kleiser of California first came into business down here, there was no systematic record of leases and cards describing property, that I know of. The information about leases was kept in memoranda form and practically all of it in the leasemen's heads. Our first step with respect to the J. Charles Green plant was to lay out a plan of rebuilding the important arteries of travel according to the latest

(Testimony of August F. Lausen, Jr.)

standards which were then in vogue and the latest approved standards that had been approved by the National Association, which I just mentioned which had solely to do with posting.

I have been in the outdoor advertising business since 1910 and have not been in any other business during that time. I have been general manager of Foster & Kleiser Company since 1916 when it was formed and am now secretary and general manager.

The present twenty-four-sheet poster panel and twenty-four-sheet poster were brought into use by the National Association. The purpose of that was to standardize the size of posters throughout the country, which would be very much more effective than the old way where we had four-sheets and eight-sheets and sixteen-sheets mixed up together on the same board. Before the thing was standardized, if we had a board 100 feet long we would post a four-sheet in one place and an eight-sheet in another and then a twenty-four-sheet; it was a conglomeration. The standardization of the twenty-four-sheet poster panel and the twenty-four-sheet poster itself, so far as the size is concerned, made the sale of the medium very much easier. It resulted in uniformity of presentation throughout so far as size was concerned. Before that a solicitor might go in and recommend the use of eight-sheets to an advertiser. Another man would go in and recommend twenty-four sheets to the same advertiser, and there was no uniformity of presentation of the medium to the advertiser until the posters were standardized and made uniform throughout the country.

(Testimony of August F. Lausen, Jr.)

During all the time I have been in the outdoor advertising business the outdoor advertising medium has been in competition with all the other media of advertising, such as newspapers, magazines and street cars, and when radio came in we were in keen competition with that. Foster & Kleiser Company has engaged in the paint business also and is now engaged in it along with the poster business. Painted displays are sold as selective showings in units from one unit up. The advertiser chooses his paint display and selects his locations according to the commodity which he is selling. It is not a general coverage. Painted bulletins are sold one or more at a time according to the commodity which the advertiser is advertising and the extent to which he wants to advertise it. It is now a national medium but not to the extent that it was ten years ago. The poster has supplanted it. Poster advertising is sold in what we call showings. A plant in a town is laid out into showings and the size of those showings depends upon the conditions in the city. The size is dependent mostly upon the population and circulation. The plant owner decides what he feels is a proper coverage to cover the entire circulation over the principal arteries of the city. Foster & Kleiser Company has decided that question by making a thorough survey of the city and making traffic counts and watching the flow of traffic and seeing to it that all of the circulation on the primary streets is properly covered. They have zones on those streets. We have made a very careful study of that and we have a man who does nothing but that. We engaged our engineer back in 1916 or 1917. We felt that the old haphazard method of building a plant

(Testimony of August F. Lausen, Jr.)

was bad because we had gone through a very trying experience just prior to that. About January 1, 1916, they had a very severe wind and rain storm in San Francisco and a considerable part of the plant blew over and injured some people resulting in the death of one person and it was a very serious situation. They used to have carpenters go out and build the plants the way they wanted them. Sometimes they put the anchor holes down a foot or two to save trouble or they would skimp on their work. We therefore felt that it was just as necessary to have an engineer in laying out the plans for the building of our structures as it was to have an architect plan a house. That was his job and then we began to give study to traffic flows and traffic and zones. That was under the engineering department and is now. There has been quite a development along those lines because all advertising is sold on circulation. That was the way advertisers were buying advertising in the other media and we have now developed to a point where they can buy advertising in the outdoor medium by circulation, that is, traffic count. That has now been developed, and there is a new organization called the traffic audit bureau which is to our medium like the audit bureau is to the newspaper and magazine field. The function of that traffic audit bureau is to check up on the traffic flow past showings and panels and certify to that flow. It is just in its infancy now. That is what it is going to do.

After we became established at San Francisco the ordinance situation at Los Angeles caused Foster & Kleiser very great concern. In 1917 the Los Angeles city council enacted an ordinance which, if it had remained in

(Testimony of August F. Lausen, Jr.)

effect, would have practically put the outdoor advertising business in Los Angeles out of business. That would have affected San Francisco because it is in this area, and it is our experience in the outdoor advertising business that one ordinance of that nature will spread to other communities. As a matter of fact, it might have spread all over the country. The Los Angeles situation was caused by the building of boards in localities where those boards did not belong, that is, in residential districts. Foster & Kleiser Company has never in its career done that. We have endeavored in all cases to keep out of residential districts not only because the law required it but also because it was good judgment to do so. With reference to the Los Angeles situation, Mr. Kleiser was in frequent conferences with Thomas H. B. Varney who owned a plant here in Los Angeles and in Oakland. Mr. Kleiser told me about those conferences. I was not present at any of those in 1917 but I was in 1918. That ordinance was passed and there was a year's grace given by the council in order to allow Varney to conform to the ordinance. It was during that year that Mr. Kleiser, knowing that if the ordinance went into effect and got before the supreme court of the state, that court would sustain it. If that had been the case, it would have been a very serious matter to Foster & Kleiser Company and to all the companies throughout the country who had very heavy investments in this business. Mr. Kleiser told me that if he could not get Varney to take proper steps to get the ordinance modified, that he was going to talk to him about buying his plant. Mr. Varney wouldn't or couldn't or didn't know how to take the steps to get the ordinance

(Testimony of August F. Lausen, Jr.)

modified. After many conferences a plan of purchase was agreed on and that plan was finally consummated. I know that of my own knowledge.

As general manager of Foster & Kleiser Company I had charge of the details of the finances and kept Mr. Kleiser informed at all times as to our financial side. The deal for the Varney plant was consummated as of April 1, 1918. At the time the plant was bought the adverse ordinance situation in Los Angeles existed. I came to Los Angeles upon the acquisition of the Varney plant. My first job was to take over the organization here and see that our system of accounting and all our methods of doing business were installed here in the Los Angeles office. We had to do that very hurriedly because the Varney business ceased on the night of March 31st and we began on the morning of April 1st. The Varney plant was in very bad condition. Its upkeep and the appearance of the display was very bad. It was constructed all over the city. There were lots of structures in the residential districts and places of that sort and they were really what caused the ordinance trouble here in Los Angeles. Most of the billboards were constructed right on the ground but very, very few of them had been raised. The first thing we did was to tear down a considerable footage and abandon the locations. Most of this footage was located in the residential districts. We either threw the material away or salvaged it if there was any salvage to be had out of it. We got the ordinance here in Los Angeles modified and we immediately tore down at least one-third of the plant. We signed notes for a million dollars to pay for the Varney plants in Oakland and Los Angeles. We actually

(Testimony of August F. Lausen, Jr.)

paid about \$750,000. The money was payable in installments. If it was paid by a certain date, it was one amount, if we paid it by another date, it was another amount. I think there were four different statements there. In other words, it was bought entirely on credit. The Green assets were bought with money borrowed by Mr. Foster and Mr. Kleiser individually. Foster & Kleiser Company rebuilt the Los Angeles plant according to the standards prescribed by the Association in vogue at that time. The name of the Association had been changed from the Associated Bill Posters and Distributors of the United States and Canada to the Poster Advertising Association of the United States and Canada. The Poster Advertising Association had to do solely with posting. It did not go out and sell any advertising in the sense of taking contracts from an advertiser. It promoted the use of the media. The promotion of the use of the outdoor advertising media was its sole purpose really and to increase the use of the media in comparison with other mediums of advertising. It was really a trade organization. It gathered statistics from all its members pertaining to the plant itself, the facilities, classes and general conditions surrounding the market area. That information was put into statistical form and placed in the hands of the sources of the business, the solicitors and agencies for outdoor advertising space. Poster Advertising Association stimulated the use of outdoor advertising by means of the standards of which I have spoken. One of the strong selling points of the medium was the standardization from a physical standpoint. Every plant owner built his panels according to the same blue print and specifications so that if a man was

(Testimony of August F. Lausen, Jr.)

buying a showing throughout the United States he could buy that at his desk in New York and feel confident that he was going to get what he bought without having to go and inspect all of his panels or showings. He got a uniform showing all over the United States, every panel was of the same size, built under the same blue print, and posters were according to the size that had been adopted by the Engravers & Lithographers Association. Membership in the Association in the old days was called a franchise. It is sometimes called a franchise now. The name of the Association at the present time is the Outdoor Advertising Association of America. That Association is the result of a merger of the Poster Advertising Association and the Outdoor Advertising Association. Before its merger with the Poster Advertising Association, the Outdoor Advertising Association was a paint association. It had to do with painted displays. It differed from the Poster Advertising Association in that its members were engaged in delivering a painted display service. Foster & Kleiser Company, delivering both a painted display service and a poster advertising service, had a membership in both associations.

We organized a national sales department which was composed of men who devoted their time exclusively to contacting large advertisers located here on the Pacific Coast for the purpose of developing sales in California. We organized it within a year after we came to San Francisco. I think it was really started in 1915. That is when we opened up business there. It was a department of Foster & Kleiser Company, in ordinary terms, a sales department. As far as I know, no other outdoor advertis-

(Testimony of August F. Lausen, Jr.)

ing concern on the Pacific Coast had anything like that. That department dealt with a number of large Pacific Coast concerns. We did not solicit their business for the sole purpose of displaying it on Foster and Kleiser Company plants alone. The primary object was to sell the space that we had for sale. But in the case of those large advertisers we could not interest them to buy locally or in isolated spots. We had to talk advertising to them in a broad sense over the entire Pacific Coast area; that is, Washington, Oregon, California and Arizona, which is part of the Los Angeles trade area. In those days we did not have plants outside of the principal cities such as San Francisco, Oakland, Los Angeles and the surrounding country. We had the plants in the Northwest which I have mentioned. Foster & Kleiser Company delivered a Pacific Coast-wide service by subletting what business we had for plants other than our own to the operators in those towns and cities. At a guess I would say that there were probably one hundred plant owners outside of the plants owned by Foster & Kleiser Company in the Pacific Coast area. Our experience in subletting this business to various plant owners was that numerous complaints were made to us by the advertiser for lack of service. There were two or three general complaints, for instance, if a man contracted to have his showing go out on the first of the month and the paper did not go up until about the 10th or 12th, it was a serious matter as far as the advertiser was concerned because he usually tied up his advertising in the outdoor medium with the advertising in the other medium, and his general sales campaign depended upon his tie-up all the way through. Besides that, we were not

(Testimony of August F. Lausen, Jr.)

carrying out our contract because we were in a way responsible. The advertiser made the contract with us and we sublet it to others. He was dealing with us. Then again if the paper started to tear and was allowed to remain that way, it became ragged and was ruined. In some cases the paper was not posted at all. I think it was nevertheless billed for in some cases even if not posted. That was not at all unusual in those days with some plant owners. I would not say it was general but sometimes a man made a mistake in his bookkeeping or something. We endeavored to get these plant owners to conduct their business in a businesslike way, that is, to improve their plants. At that time the modernization of plants was going along at a pretty good speed and some of these plant owners were not keeping abreast of the time. The rules of the Association provided for panels, and some of them were still carrying on the old style long wooden boards, not even steel facing in a good many instances.

The greatest volume of advertising of all kinds, including outdoor advertising, became very apparent along about 1921 or 1922. After the war we had a depression of about two years duration or more. There was a tremendous amount of goods on hand that had accumulated as a result of the war as, for example, automobile tires and food-stuffs and things of that kind. The factories had been requisitioned by the government to produce goods for the government almost exclusively and at the end of the war they had tremendous inventories on hand of both finished and raw materials. It became necessary to make a very intensive effort to remove those goods and advertising was used as one of the means to move those goods and

(Testimony of August F. Lausen, Jr.)

turn inventories into cash. I don't know whether outdoor advertising through the efforts of the sales organizations in the East was getting its entire share, but the volume was increasing very rapidly. Foster & Kleiser felt that increase in volume. In trying to get these plants to whom we sublet business on the Pacific Coast to improve their service, I talked with all of these plant owners. We had meetings and talked with them all but I have a distinct recollection about Sacramento. The service up there was very poor. Besides that, there were rumblings of agitations because Sacramento was the capital of the state and the advertising was in evidence there before the legislators all the time. The service and the physical condition of the plants were very, very poor. Santa Barbara was the same way. It is an important point because it is a highly residential city and the home of very wealthy people, manufacturers, merchants and other potential buyers and users of the medium from the East, and the plant there was in a very delapidated condition. We had difficulties with our sublet contracts on the Temple plant at Santa Barbara. We had talked with the plant owner about it and got no practical results at all. We saw that we were not getting very far in our efforts to induce these plant owners to invest additional capital in the rebuilding of their plants and the relocating of their structures so as to get on the prominent business thoroughfares where the circulation really was. That was one of the drawbacks to some of those old plants. They were not in evidence. They were on secondary streets, in the back alleys or around the freight yards. The advertiser wanted to have his posters in evidence and the only way to get them into evidence was

(Testimony of August F. Lausen, Jr.)

to put them were the people are and where the buying power is. Another thing was that with the increase in business a great many of these plant owners did not increase the capacity of their plants so that they had to turn down orders. That is a very severe drawback to the solicitor for the producer of the business because when he sells a contract if he can only deliver fifty to sixty per cent of it the advertiser doesn't want it at all. That was one of the serious things. I don't remember that any of the plants to which Foster & Kleiser sublet business were competitors of Foster & Kleiser Company. As far as I now recall we did not have a plant in any town in which we sublet business. As a matter of fact, I can't remember any plant owner that was doing a poster business in the towns in which we operated. The increase in business which we were getting was mostly posting, although there was a considerable volume of paint at that time. When we failed to get any results in the improvement of the service in the plants to which we were subletting our business, we felt that our next step was to put ourselves in a position to deliver that service. If Foster & Kleiser Company did not put itself in a position to deliver the service, there was no one to deliver the service that the advertiser demanded. Foster & Kleiser Company proceeded to buy those plants. We bought one or two prior to 1918 and 1919. We bought Ellert & Stevens at San Francisco in 1915 or 1916, and also Jack Shean's plant almost simultaneously with the Green plant. He had what you might call a specialty plant in San Francisco consisting solely of rough bulletins. Ellert & Stevens temporarily made a success of their business during the fair because

(Testimony of August F. Lausen, Jr.)

there was a considerable amount of business that was given to it by the Panama-Pacific Exposition that was going on at that time. Practically all of their business was fair business and after the fair was over they did not have so much business and they went broke. They then came to us and asked us whether we wanted to buy them out and we bought them. They went into business then at San Jose. They borrowed the money to buy that business at the bank and Foster & Kleiser Company endorsed the note. They did not make a success of that business. They allowed it to run down and they were losing contracts and not meeting payments at the bank, and they again came to us and wanted us to take them over. That was done.

In acquiring the plants we did not necessarily buy only association plants. There were not any non-Association plants doing any poster advertising business.

A competitive outdoor advertising plant is a plant which is located in the city in which we are doing business and competing with the service that we are rendering in that city. On that basis, of the plants shown on plaintiff's Exhibit No. 1-Z, the following plants were competitive plants: The Western States Advertising Company, which was taken over practically at the same time we took the Green plant although they were in competition with Green. That was located in San Francisco. We took it over in the same month that we took over Green so I would consider that a competitive plant of Foster & Kleiser. We had the Outdoor Advertiser. That was a small plant in San Francisco. Coast Advertising Company; that is the Ellert & Stevens outfit. They were doing business under that name.

(Testimony of August F. Lausen, Jr.)

In 1921 we took over Erskine and LaFon. That was a competitor here in Los Angeles. We got two plants in Sacramento, the Funk and the Caswell plants. They were in competition with each other up there. We were not operating. Funk came to us and wanted to sell his plant and we bought it and then I guess we were in competition with Caswell but we bought him very soon after we bought Funk. Funk is our Sacramento branch manager today and has been since we took his plant over in 1921. Other competitive plants that we acquired were the Reimer Advertising Company. They did solely a three-sheet business in San Francisco. I don't know whether that is competitive or not. Next is George Mann. He did a three-sheet business here in Los Angeles. We took him over in 1922. In Long Beach we took over Winkler and Whited. They were competing with each other. We took them both over at practically the same time. Then we took over D. R. Branham in July, 1923. That was a painted display plant. They dealt in painted bulletins. We took over F. A. Urban in February, 1924. He was a competitor. None of these plants were poster plants except the three-sheet plants. None of them were twenty-four-sheet poster plants, and none of them had any facilities for a twenty-four-sheet poster. The twenty-four-sheet poster had become standard at that time. Then there is the Union Advertising Company and Allen and Watt in Los Angeles. They were taken over in March 10, 1924. We had closed the negotiations for the purchase of that plant some three or four months prior to that. The Union Advertising Company was a corporation and had quite a number of stockholders and we did not close the transaction until they got the

(Testimony of August F. Lausen, Jr.)

written consent of the majority of the stockholders to authorize a transfer of the properties. The plan of purchase had been decided upon long before March 10, 1924, subject to the consent of the stockholders and subject to their being able to deliver it free and clear. The Union Advertising Company had some posters. Allen and Watt did not. Allen and Watt at one time was a separate concern and the Union Advertising Company took them over. The fact is they were the same thing at the time the negotiations were going on. The next is the DeLuxe Advertising Company, acquired October 3, 1924. That was a competitor in painted display. Here is the Carter Poster Advertising Service. That was acquired June 6, 1925. They were highway operators. Here is a competitor, McKenna, at Tacoma, taken over on November 19, 1925. I, myself, personally supervised the acquisition of these plants. Reports concerning negotiations were made to me from time to time by those conducting the negotiations. I had to approve all the transactions before they were finally approved by Mr. Kleiser. Here is the Yakima Sign Service. He had some highway bulletins near Yakima, Washington. We acquired him in October, 1926. The Highway Display Company in November, 1927. That was in Los Angeles. He was in the painted display business. Stewart Sign Service in the commercial sign business up around Santa Maria, California. He was not really a competitor. He had some locations and he wanted to get out of the business and we paid him and took over his plant. We took over the Strand Advertising Company, a three-sheet operator in Portland, in March, 1928. In those days theatres were practically the sole users of three-sheets. It was purely a local matter. Another competitor was the

(Testimony of August F. Lausen, Jr.)

Doddington Advertising Company, Fresno. He was a commercial sign painter and not really a competitor. He had some small highway boards and some locations that we could use so we took him over. We took over the Acorn Sign Company on July 15, 1928. That is in Portland. He had a few poster panels. Catherine M. Thom had some small signs along the highway around Stockton. F. B. Heider was doing a paint business in the Bay area. That was in July, 1929; and then we have the Coast Advertising Company in Oakland in March, 1930. We bought that plant from the receiver in bankruptcy. In April, 1930, we took over the La Fon System in Los Angeles. That is the last one on my list. I missed J. R. Owens, the Elevated Sign Company of Seattle. We acquired that on January 19, 1922. As far as that list is concerned, by the cursory examination that I have made of it, I have told you all the competitors that were acquired down through 1930 to the present time. I personally had the immediate direction of the acquisition of practically all of these plants in the negotiations. Mr. Kleiser was interested in some of them and handled them personally. With reference to the plants with which we were not in competition which we took over, we had the alternative of acquiring them or we could have built our own plants. We never built our own plant or a competing plant in a community in which we had been subletting business, nor did we ever threaten to build a competing plant in such a community. I think the acquiring of them in the long run was much cheaper than building our own.

Sniping is the posting of posters indiscriminately around a town on places like sides of buildings or barns or places

(Testimony of August F. Lausen, Jr.)

that are not really built for the accommodation of posters. During the period I have been connected with them, Foster & Kleiser Company has never engaged in that sort of thing at all. Our company has been unalterably opposed to sniping, ever since I have been connected with them. That opposition has been manifested by endeavoring to clean up all those spots either by getting permission of the property owner to use the location for a poster panel or else cleaning them up and painting them and marking in stencil on them "Post no bills". We have followed the policy of leasing such locations for the purpose of cleaning them up and marking "Post no bills" on them. I never heard of any of our competitors who do that sort of thing. If, instead of buying out the non-competing plants that we did buy out, we had constructed our competing plants in any of the cities in which a non-competing plant existed, we could have obtained a membership in the Outdoor Advertising Association or its predecessors, the Poster Advertising Association, and the Paint Association at any time during the years 1921, 1922 and 1923 when we were acquiring all these plants, and at any time subsequent to those years. It is a fact that there could be two or more memberships of competing outdoor advertising companies in the same communities from 1924 on until the present time. That is, through to the present time. That has been true at all times since some time in the spring of 1916.

Foster & Kleiser has eleven branches in its organization. We had four branches when we formed the corporation, located in Seattle, Tacoma, Portland and San Francisco. Upon the acquisition of the Varney properties we opened a branch in Oakland and one in Los Angeles. Later we

(Testimony of August F. Lausen, Jr.)

acquired branches at Long Beach, Sacramento, San Diego, Fresno and Medford. Each branch is in charge of a branch manager and all, except the four small branches, have a lease manager.

Our biggest year in the outdoor advertising business ended with our fiscal year March 31, 1928. It was growing up to that point and after that it dropped off. In the peak years on the Pacific Coast Foster & Kleiser delivered an outdoor advertising service in 607 towns, large and small, distributed throughout these various branches.

The National Sales Department, which was afterwards called the General Sales Department, was run entirely separate from any of the branches. It was under the management of the General Sales Manager and the function of that department was to take care of all of what we termed Pacific National Accounts, being the larger accounts on the Pacific Coast that had a wide distribution. Distinct from that we had what we called our local sales department in each branch that handled the local accounts. When the National Sales Department got business, it sublet the entire contract, whether it went on the plants of Foster & Kleiser Company or on the plants of other companies. That department was paid a commission by the branches of Foster & Kleiser Company just as it was paid a commission by any other plant owner. We abolished that department in 1929 because we had men working under the general sales manager located in San Francisco who were stationed at these various branches and were not under the control of the branch manager whom we held responsible for the development of that territory. For example, we held the branch manager at Los Angeles re-

(Testimony of August F. Lausen, Jr.)

sponsible for the development of sales in the Los Angeles territory, but we had the National Sales Department there operating as a department of the general office in San Francisco with a representative at Los Angeles, and that representative was reporting directly to San Francisco and not to the manager who was really held responsible for the development of this territory. Accordingly, we decided that the proper thing to do was to make the branch manager responsible entirely for sales in that territory, whether national or local or any other kind. Furthermore, the managers objected to paying a commission to the general sales department of the general office on business.

That change in the national sales effort did not have any relation at all to the General Outdoor Advertising Company or to the Bureau or to any other producing or selling agency except Foster & Kleiser Company.

An agency is an advertising counsellor. It is a group of men who have made a study of advertising in all of the media and their object is to secure from the advertiser his entire appropriation for advertising. He advises with the advertiser as to how that appropriation should be apportioned or used solely in one way or in two ways or in various ways. We have four major media of advertising, that is, newspapers, magazines, radio and outdoor. An advertiser having a million dollars to spend, the agency will lay a plan before the advertiser as to what he proposes to do with his million dollars. So much of that might be for newspapers and so much for magazines. He might use the entire million dollars in those two ways or he might put some of it into radio or into outdoor advertis-

(Testimony of August F. Lausen, Jr.)

ing. The agency studies the problems of the advertiser and knows his merchandising, manufacturing and distribution problems and he advises as to what this money should be spent for. A general agency is an agency that advises advertisers with respect to all questions of advertising media. Since 1917 most of the national outdoor advertising business has come through two sources. At that time the principal source was what we would call the national solicitor who devoted his time exclusively to the sale of outdoor medium. Some business came through agencies. It was about that time that the National Outdoor Advertising Bureau was formed to handle the outdoor portion of the business which was created by the general agencies. The origin of these national solicitors, who devoted their efforts to selling the outdoor medium exclusively, goes back to the time that the national association licensed a certain group of men to solicit business for the plant owners that were members of the association. The Poster Advertising Company was composed of a group of these exclusive national solicitors. When it was organized, it took in a group of six or seven men who were producing the largest amount of outdoor advertising that was being done in the country. In other words, the Poster Advertising Company was a corporation devoting itself exclusively to the solicitation of outdoor advertising accounts. That is to be distinguished from the Poster Advertising Association. That was a trade association. The Poster Advertising Company was a business corporation for profit. Foster & Kleiser Company has never had any agreement with the Poster Advertising Company in any form, express or implied, to the effect that all of the business solicited by the

(Testimony of August F. Lausen, Jr.)

Poster Advertising Company would be placed on Foster & Kleiser Company boards. It has never had any such agreement that any of the business solicited by the Poster Advertising Company to be placed on Foster & Kleiser boards. The Poster Advertising Company was made a part of the General Outdoor Advertising Company when that was formed in 1925. Foster & Kleiser Company has never had any agreement of any kind with the General Outdoor Advertising Company to the effect that all or any part of the business solicited by the General Outdoor Advertising Company should be placed on the boards of Foster & Kleiser Company.

The National Outdoor Advertising Bureau is composed of a number of general outdoor advertising agencies and its function is to distribute for those agencies that portion of the advertising appropriation that is to be executed on the plants of outdoor advertising operators. Foster & Kleiser Company has never had any agreement of any kind or character, express or implied, with the Bureau or with the agency members of the Bureau that all or any part of the business passing through the Bureau would be placed on Foster & Kleiser Company boards.

A stock poster is a poster that is manufactured by a lithographer to be used by retailers. They carry a design and that design is reproduced on the poster leaving a blank space for the name and address of the advertiser. A service poster is practically the same thing, only it is handled in a different way. The only concern I know of that handles the service poster is the Donaldson Lithographing Company. Their representative calls on the advertiser who is usually a retailer in various com-

(Testimony of August F. Lausen, Jr.)

modities and endeavors to induce them to use these posters as a means of advertising. He endeavors to get them to use the service, which includes the posters, as distinguished from the posters themselves. The Donaldson Lithographing Company has control over the poster in that they will only sell one design or one poster in a town. In other words, if he sells Mr. Smith, the shoe dealer, that ends the sale of that shoe poster in that town. He won't sell that poster to Brown who is in the shoe business in the same community. The stock poster would be sold to an advertiser who could buy them in any quantities and he could use them in any way and any place and any time he wanted them. The method behind the service poster is that it is sold to the advertiser and the lithographer really has the say as to when and how they should be used. Foster & Kleiser Company bought stock posters about twenty years ago and resold them for their own account. We have never bought any service posters from Donaldson. Not outright. We might have arranged with Donaldson to purchase those posters for the advertiser but they belonged to the advertiser. We did not purchase them for our own account but for the advertiser's account. As I understand Donaldson's method of doing business, Donaldson would not have sold Foster & Kleiser Company any service posters nor would they have sold them outright to any plant owner. He limits the sale of these service posters to the advertiser. Donaldson did not pay Foster & Kleiser a commission for selling service posters. We paid Donaldson Lithographing Company a commission on the amount of space that was used to accommodate those service posters. The advertiser paid for the posters

(Testimony of August F. Lausen, Jr.)

themselves. Foster & Kleiser Company did not have any agreement or arrangement of any kind with the Donaldson Lithographing Company to the effect that the Donaldson Lithographing Company would not permit its service posters or posters of any other kind to be displayed on any plants other than Foster & Kleiser Company's plants. We never had any arrangement with Donaldson Lithographing Company of any kind, express or implied, to the effect that Foster & Kleiser Company was to be the sole means or medium through which Donaldson would dispose of its service posters in the Pacific Coast area or any place else.

I know Mr. Charles King. I have had a conversation with him about the acquisition of stock in the Special Site Sign Company. It was a long time ago in the spring of 1920. You showed me some stock certificates dated March 19, 1920. The conversation which I had with him was prior to that date. The conversation took place in our office in San Francisco on Valencia Street. There were present Mr. Charles King, his brother, Joseph, Mr. Kleiser and myself. I think Mr. King called on me just prior to this conference in reference to that matter. My recollection of the first conversation is that he called and mentioned the fact that a Mr. Potter, who was a half owner in his business, had talked to me with regard to the sale of the stock which was owned by Mr. Potter. I don't recall just how this conversation really came about but I know that it resulted in my suggesting that they take the matter up with Mr. Kleiser. The four of us then met with

(Testimony of August F. Lausen, Jr.)

Mr. Kleiser and the substance of the conversation was this: That they wanted to sell that stock and Potter had already talked with me about it. Mr. Kleiser told Mr. King that Foster & Kleiser Company was not interested in buying the stock and that we never bought any stock in the purchase of any plants. He then suggested that perhaps a way out would be to purchase the entire business of Special Site Sign Company. They did not want to entertain any such proposition as that. Mr. Joseph King felt that that was a business that they would like to continue to hold and operate. He said that they felt that it was an opportunity there, that they never expected to grow very large but it was really a business that they would like Charley King to continue in. That it was a nice occupation with a good future in a small way. It wound up by Mr. Kleiser agreeing that he and Mr. Foster would take that stock off their hands for \$7500.00. The windup of it was that the stock was to be made out in the names of Charles King as trustee and Joseph King as trustee for twelve shares each. I recall why the certificates were made out to them as trustees. Charles King or Joseph King said that they did not want to relinquish control of the company. Mr. Kleiser said, "Well, Charley, we are not interested in the control. We don't want to run the company. Have the stock made out any old way." I think I have told all that I recollect of the conversation. At no time did Mr. Kleiser hammer on the table. At no time did Mr. Kleiser say that he or "we" were interested in getting all the advertising business, nor did he say anything to that effect. The Special Site Sign Company was dealing almost exclusively in highway displays and had various size structures. It was not really in

(Testimony of August F. Lausen, Jr.)

competition with Foster & Kleiser Company. Their class of structure was not our standard. They did not get business from the some class of the advertising trade as we did. They were dealing with customers who did not want to pay the price that we were charging for our service. They had a cheaper service. My recollection is that Mr. Potter owned the stock and wanted to sell it to us. Mr. King held that Potter was negotiating with us and he and his brother came over. Special Site Sign Company or Charley King did not have the money to give Potter, as far as I know. That is the reason they called on us, to see whether we would put our money into it, but we, as far as the company was concerned, were not interested in it. I, as general manager, was in charge of the finances of Foster & Kleiser Company. Foster & Kleiser Company never paid for that twenty-four shares of stock or any of it. I know that of my own knowledge. The certificates of stock were delivered to me in the lobby of the Palace Hotel in San Francisco. This was not a deep dark secret. Mr. Kleiser mentioned the fact that it was not to be generally known but it very soon became known. The Palace Hotel was suggested as a convenient point of delivery because it was downtown and we were way out of town there and the Wells-Fargo Bank, where Mr. Foster and Mr. Kleiser carried their accounts, was opposite the hotel. When I received the certificates I put them in Mr. Foster's and Mr. Kleiser's box in the Wells-Fargo Safe Deposit Department. This certificate No. 10 of Special Site Sign Company stock dated March 19, 1920, is one of the certificates which I received at that time. This certificate No. 11 dated March 19, 1920, for twelve shares is one of the certificates I received at that time.

(Testimony of August F. Lausen, Jr.)

Mr. Clark with the consent of Mr. Glensor thereupon stated the substance of said certificates as follows:

Certificate No. 10, Special Site Sign Company, reads as follows: "Oakland, California, March 19, 1920. No. 10. Capital, 30,300 shares, \$100.00 each. This certifies that Charles H. King, Jr., Trustee, is the owner of 12 shares of the capital stock of Special Site Sign Company, transferable on the books of the company by endorsement hereon and surrender of this certificate. Signed, J. H. King, Secretary. Charles H. King, Jr., President."

Endorsed on the back, "Charles H. King, Jr., Trustee."

Certificate No. 11 reading in the same way, except that the owner of the stock is J. H. King, Trustee, and for the same number of shares, 12 shares; the certificate is signed "J. H. King, Secretary", and "Charles H. King, Jr., President."

Foster & Kleiser Company never made any attempt to exercise any control over the voting of those shares evidenced by those certificates. As far as I know, George W. Kleiser never made any attempt to exercise any control over the voting of those shares. Neither did Mr. Walter Foster or any of them. When I received these shares in the Palace Hotel the conversation lasted a very short time, probably not more than ten minutes. I can't recall any specific conversations. We probably talked generalities and I took the stock and looked at it and passed the time of the day and departed. I did not say to King at that time, "I want to warn you, King, we are out to get you." Nor did I say anything in substance similar to that. I did

(Testimony of August F. Lausen, Jr.)

not give him any warning at all about anything, I had no occasion to. I have absolutely no recollection of saying anything to him at all about the so-called Hamlin location down the peninsula. I have no recollection that the Hamlin location came up for discussion at that time. I know very well what the Hamlin location was, and I knew the condition of it. I had seen it many times. The structures that were on there were a mess of structures of all sizes and shapes. I don't know how many but there were plenty and they were in a very poor and dilapidated condition. There was considerable agitation about that and other locations down the Peninsula from Women's clubs in those towns like San Mateo and Hillsboro. They were filing protests against the desecrating of the landscape, as they called it. They came to us. There was one woman, a Mrs. Ginn, who was very prominent in women's affairs, who was in communication with Mr. Roy McNeill on the subject. I don't think that Foster & Kleiser Company had any lease interest in the Hamlin location on March 19, 1920, or any boards on it. I was informed that Foster & Kleiser Company subsequently acquired lease rights on the location. I did not say to Mr. King in substance or effect, "We are going to get the Hamlin location if it costs us 10,000.00".

After the acquisition of the stock in the Special Site Sign Company, an audit was made of the books of that company. I don't remember any list of locations of the Special Site Sign Company which accompanied the audit. The audit was made shortly after the stock was acquired.

I know Mr. Austin Cordtz and I have met his father, Robert W. Cordtz once. I met Austin twice. The first time I met him was in Los Angeles shortly after we took over the Varney plant. The next time I met him was down

(Testimony of August F. Lausen, Jr.)

in San Diego right after we took over the McClintock plant in December of 1923 or the very early part of January, 1924. My recollection is that Austin Cordtz sent word through someone connected with the organization that he would like to see me. He subsequently called at my room at the U. S. Grant Hotel and brought his father along. The conversation drifted around to McClintock. Young Mr. Cordtz stated that they had always experienced difficulty in getting along with Mr. McClintock. They were in rows and lawsuits all the time over the fact that we had come into the field and McClintock was going out and that it might make some improvement in his operating down there. He said that they were glad to have our method of selling put into effect there because he felt that that would help him in his sales. He mentioned that he would like to make an arrangement with me whereby he would not enter into any competition with us in either sales or leasing. I told him we could not do that because it was not a practical way to work. We would be more or less bound to call him up every time we wanted to sign a lease on a location and see whether he was working on the same thing, and the same thing would apply in the sales. That led me to believe that he was leading up to the question as to whether we were in the market to take over his plant. I suggested that perhaps it might be advantageous to him and to us that he put his properties in with us. At that time we were just about ready to remodel the San Diego plant and it would be a logical time to make a job out of the whole thing and make one good outdoor advertising plant. I also mentioned the fact that we were building an organization and we were always in the market

(Testimony of August F. Lausen, Jr.)

for good men and that I felt that there would be a place for young Mr. Cordtz in our organization; that he had had considerable experience in the outdoor field which would be valuable to us and enable him to occupy a position of some importance. He said that the objection to that was that his home was in San Diego and that he had lived there all his life and had a family there and owned property and that it would be a drawback if he had to leave San Diego. I could not assure him that he would not have to leave San Diego. The terms of purchase were not discussed at all. They said they would think it over that night, and went away. Austin Cordtz called me up before I got out of town and said that they had decided not to go any further with it. I don't remember whether I was down at the office or whether somebody delivered the message to me. I have told all that I can recollect about the conversation that took place there. I did not say to either of the Cordtz's at that time that I thought I would call them over to the office or to the hotel and see if they were interested in selling their plant to us. I did not say to either of them at that time, "We are going to clean up on all this independent competition on the coast and we thought you might be interested in selling out." I did not say anything of that substance or to that effect. I have no recollection of receiving any telegram while they were there. I did not recall that Mr. Cordtz said to me in substance or effect, "Well, you have received some good news, Mr. Lausen." I did not say at any time during that conference, "Oh, just another one of the outlaw independents came into the fold," or anything to that effect. Mr. Cordtz did not ask me who it was nor did either of them ask me.

(Testimony of August F. Lausen, Jr.)

I did not say, "Oh, a fellow by the name of McKenna up in Tacoma." Neither the younger nor elder Cordtz said to me, "Oh, yes, I know Mr. McKenna. He has the McKenna Company up there." I don't remember having acquired the McKenna Company at that time. I never heard of more than one McKenna in the outdoor advertising business in Tacoma. From this Exhibit 1-Z I see that we acquired McKenna on November 19, 1925. I have no recollection that it was acquired at any other time than the time shown there.

I have known C. E. Stevens for a number of years. My recollection is that I met him once in the summer of 1929 at the Sir Francis Drake Hotel in San Francisco. Mr. Kleiser, Mr. Foster and Mr. Roy McNeill were also present. I was in Mr. Kleiser's office one Saturday morning and he received a telephone message from Mr. Stevens and an appointment was made. Prior to that time I had had a conversation with a young man by the name of Culliton from Seattle about a possible meeting between Mr. Kleiser and Mr. Stevens. Mr. Culliton telephoned to Mr. Stevens at Seattle from my office in San Francisco. At that conversation at the Sir Francis Drake Hotel there were probably some preliminaries but I don't remember them. The object of the interview was to talk over with Stevens the possible purchase of his plant in the Northwest and LaFon's plant down here in Los Angeles. There was a considerable talk regarding details but I don't remember at this time. He claimed that he had authority from Mr. LaFon to negotiate for the sale of the LaFon interests as well as his own. We asked him what he had and how much he wanted for it. He said, "You fellows know about as

(Testimony of August F. Lausen, Jr.)

much as I as to what I have so why ask me what I have got." We wanted to know what he wanted for it and he said he wanted \$550,000 for the two interests. I expressed a thought that that price was very high for what I knew he had from what I had observed going around the cities, and told him I would like to know just how he based his value. I did not know what he had otherwise to dispose of. He said that he did not have any statement but that was his price and he stuck to it. I tried to get what we thought would be a reasonable figure and he said, "Well, of course, you know I am a pretty good nuisance around here and it is going to cost you some money to get rid of the nuisance." We talked a couple of hours around those lines and Mr. Kleiser had to leave. He excused himself and we stayed there about ten or fifteen minutes more and Mr. Foster said that we would think it over. Mr. Stevens said, "Well, don't think too long because I am thinking right now of boosting my price \$50,000." We left and talked it over whenever we got back to Mr. Kleiser's office and decided the price was too high. He called up Mr. Stevens and told him so. That is all that I can remember of the conversation that took place. Nothing at all was said in the course of that conversation by anybody about wanting to control locations. Neither Mr. Kleiser or anybody at the conference said that Mr. Kleiser or Foster & Kleiser Company was going to control all the good locations on the Pacific Coast. If we had any such intentions, I don't think we would have told Mr. Stevens we were going to take them away from him or try to get them or anything of that sort. Nothing at all was said by anybody at that conference in substance or to the effect that Foster &

(Testimony of August F. Lausen, Jr.)

Kleiser had taken a large number of Steven's locations away from him and would continue that policy unless Stevens sold out. I don't remember that anything was said by anybody at that conference in substance or to the effect that Stevens should have known or should know by that time that Foster & Kleiser Company controlled the major portion of the national business on the Pacific Coast and that it would be pretty hard to compete with Foster & Kleiser Company in one town when Foster & Kleiser Company were operating in five hundred. I don't remember any such thing as that. As far as I recall, Mr. Kleiser did not say anything of that kind. Nothing was said by Mr. Foster or by anybody else at that conference to the effect that Foster & Kleiser Company did cut prices in order to take Stevens' business away from him.

At the conversation I had with Mr. King in March, 1920, in the office of Foster & Kleiser Company on Valencia Street, Mr. King said that he and his associate, Mr. Potter were not getting along.

The meeting with Mr. Stevens at the Sir Francis Drake Hotel in San Francisco was not negotiated by Foster & Kleiser Company or anyone connected with it. A young man, Mr. Culliton, called at my office in San Francisco one day and asked me if I would be willing to talk with Mr. Stevens of Seattle. I told him I would be very glad to talk to him at any time. He wanted to know whether I expected to be in Seattle in the near future and I told him I didn't think so. I asked him what was on his mind and he said that Mr. Stevens approached him some time ago and wanted him to get his mother-in-law to advance some money.

(Testimony of August F. Lausen, Jr.)

The last plant acquired by Foster & Kleiser was the LaFon plant in Los Angeles acquired in 1930. The purpose of the acquisition of it was that he had locations and a plant which we could use and merge with ours to good advantage. It was not the purpose to eliminate LaFon as a competitor but that was the result of it. We could use the LaFon locations and LaFon structures to very good advantage and did make use of them. I am a member of the board of directors of Foster & Kleiser Company and have been ever since it was organized. When Foster & Kleiser Company acquired these plants it was not its purpose to eliminate or prevent competition. The purpose was to build up our business and be able to deliver a service in a uniform manner throughout the Pacific Coast area. If we had not put ourselves in a position to deliver that service, there was no one else in the field at that time who showed any disposition to do it. If we had not put ourselves in a position to deliver that service and if the other plant owners continued to deliver the class of service they were delivering, we would be losing business on the Pacific Coast from the Pacific Coast accounts. We had received several threats from large customers that unless there was definite improvement they would have to use their money in other media. Foster & Kleiser Company has not forced any competitor to sell out. It has not threatened to build a competing plant with a competitor for the purpose of forcing him to sell out. The competitors' plants that we did acquire we did not acquire for the purpose or with the object of eliminating the competitor from the outdoor advertising field. In practically every case, if not every case, we were approached by these plant

(Testimony of August F. Lausen, Jr.)

owners with the idea in mind that we would take over their plants. When such an approach was made we looked over their properties, approached them and if we could get it at a reasonable figure we made a deal. If we were not interested or if we could not arrive at a reasonable figure, we did not make a deal. We had use for each plant that we acquired or some part of it at the time we acquired it. We made use of everything in that plant that they had that we could fit in with our classifications. The usual determining factor in most cases were the locations or leases which they might have had which we could use to good advantage because we were always in need of good locations in the heavily trafficked or traveled districts. Going back to 1921, 1922 and 1923, the plants that we acquired did not have written leases. They had structures of one kind or another erected upon locations. We made use of those locations and then set about immediately to get the location tied up on our regular lease form. In that period the demand for space in outdoor advertising was greater than Foster & Kleiser Company could then supply without acquiring these competitive plants. The orders were coming in faster than we could handle them with the space that we had at those times and we were confronted with the problem of getting enough locations to build our plant to a sufficient capacity to take care of the volume which was offered to us.

I first heard the term "undercover work" used in connection with the activities of the Los Angeles branch in connection with the purchase of the DeLuxe Advertising Company in 1924. I found out that Clyde Meyer was engaged in undercover work at Los Angeles in 1924. Neale

(Testimony of August F. Lausen, Jr.)

Brothers, who owned the DeLuxe Advertising Company, called on Foster & Kleiser Company in San Francisco. They met Mr. Foster and he asked me to step into his office and I took part in the conversation which ensued. The Neale Brothers were very much exercised at what they called our unfair methods in competition for locations with them. They said that they had entered the business with the idea that it was a very profitable business with few problems to contend with and that all they had to do was to get some locations, erect some signs, paint them and derive a profit therefrom. They found, however, that there were very many more problems connected with the business. They were heavily in debt, having borrowed money from their mother, and they were very much concerned about the outcome of the whole thing. They asked us during that interview whether we would be interested in taking over their plants. We told them it depended upon what they had and what they wanted for it. Mr. Foster said he expected to be in Los Angeles within the next week or so and would look into the matter. That was the first I ever heard of any alleged unfair practices against the DeLuxe or anybody else in Los Angeles under the leadership of Clyde Meyer. Mr. Foster subsequently came to Los Angeles and asked me to come down a day or two after he got here to try and arrange a deal, because they had some really good structures and some very fine locations. Mr. Kleiser was not here at that time, he was in the East. The Neale Brothers told us that they felt we were very unfair in our business methods in the way that we competed with them and that we were using underhanded methods. I don't remember that they went into

(Testimony of August F. Lausen, Jr.)

detail but they might have, but while we were there in Los Angeles I made it a point to take the matter up with our manager, Musaphia. He called in Mr. Young and they admitted that they had. They told me that Meyer was acting as a sort of undercover agent in representing himself to be a real estate man; that he had a real estate office and quite a number of things which were entirely contrary to our methods of doing business. I was very much surprised and told them that they were acting contrary in every way to the policies on which we always worked and that we did not want to indulge in anything that was not free and above-board, and that they should cease all of those things immediately and never let it happen again. As far as I know, it was stopped at that time. I think I inquired into the cost of those operations and my recollection is that they told me they had spent some \$7,000.00 or \$8,000.00.

The branches of Foster & Kleiser Company render a financial report showing the operations, income, expenses and net results to the general office every month and they did so during 1924. In addition to the report, the branch manager wrote letters at the end of the month. They did not accompany the main report but came in at the latter part of the month, summarizing his expenses, as shown by the branch manager's report, and commenting upon them. If there was anything out of line or extraordinary, he would mention that in the letter. The financial reports as distinguished from the letters came to my desk as general manager. This Los Angeles branch profit and loss and asset sheet 18-B, being plaintiff's Exhibit No. 27-F for identification, is the financial report, or a copy

(Testimony of August F. Lausen, Jr.)

of it, that was sent in by the branch manager of the Los Angeles branch during the years 1920 to 1933. The reports for the year 1924 are there. This is the form of the report that I get, although I don't get all these sheets. That is the only type of financial report that the general office got or gets from its branches. There is nothing in any of these reports to indicate that the Los Angeles branch was spending any money at all on the operations of Clyde Meyer that have been described here, or any expenditure of that sort. If the cost of the operations of Clyde Meyer had been charged against the lease department in any way, it would have appeared in these reports in some one or more of the lease department accounts such as space rental account, space department segregation, or unbuilt space. I have examined these reports from the Los Angeles office to the San Francisco general office made during 1924 under your direction. There is nothing in these reports to indicate any expenditure for the Clyde Meyer operations to the lease department. There is nothing in any of the reports which came to me to indicate that the operation was going on. The subdivision of the general expense account 363-A is an account for the purpose of taking care of all sundry expenditures that cannot be allocated directly to any particular account that is in our books. The total monthly expenses of the Los Angeles branch in that period charged to general expense were fifty odd thousand dollars, more or less. There was nothing in any of the reports that I ever saw that came to me for the months of 1924 which indicated that any expenditure was being made by the Los Angeles branch on this Clyde Meyer operation. I do not see all of those

(Testimony of August F. Lausen, Jr.)

reports, such as the detail sheets. I see the top sheet which shows the net results. That and the top sheets of all the other branches are taken by the general accountants and combined into a consolidated report of all business. Since this case was filed I have examined the sheets for the months of January to December, inclusive, in 1924 from the Los Angeles branch, similar to the sheet which I hold in my lap. There is nothing in those sheets indicating that any expenditure was being made on this work of Clyde Meyer. There is nothing in any of those sheets under the general expense account or any phase of it indicating that this expenditure was being made for the work of Clyde Meyer.

I subsequently heard of further depredations and unfair practices indulged in by the Los Angeles branch. Musaphia was manager and Mr. Young was assistant manager. They were the same men who had been manager and assistant manager before. I heard about the account first of the unauthorized work through a visit of Musaphia and Young to San Francisco. It was in the early fall or latter part of the summer of 1927. They came to apprise Mr. Kleiser of the fact that the LaFon System had threatened suit against the Foster & Kleiser Company. They were very much disturbed over that and wanted to know what to do. Upon questioning, we learned that they had without any authority or knowledge on our part again indulged in undercover work. Mr. Kleiser, in my presence, instructed them to return to Los Angeles immediately and cease everything that they had

(Testimony of August F. Lausen, Jr.)

been doing along those lines and to report to our counsel in Los Angeles, Gibson, Dunn & Crutcher, and to report back. They did call on Gibson, Dunn & Crutcher and made such report and reported back. Gibson, Dunn & Crutcher advised that we were certainly not conducting our business properly and were probably conducting it illegally. I instructed Mr. Haynes to go to Los Angeles and see to it that all of the facts were placed before Gibson, Dunn & Crutcher. When Musaphia and Young came to San Francisco and told me about the threat of LaFon to sue, that was the first time that I had heard of these operations against LaFon. A statement was made in the office of Gibson, Dunn & Crutcher by Musaphia and others concerned, including Clyde Meyers. I have read that statement. I have read plaintiff's Exhibit No. 20-G in evidence, or a copy of it. After that statement was made, I instructed our auditors, McLaren & Goode Company, to make a complete audit of cash transactions here in the Los Angeles branch over a period beginning with the fiscal year of that year and to render a report of their finding. That took quite a while but we finally did get the report. I submitted a report of the finding of McLaren & Goode Company to Mr. Kleiser. Mr. Kleiser and myself thereupon made an investigation into the affairs of the Los Angeles office after that report.

Mr. Clark then stated that defendants would now offer proof that Musaphia, Los Angeles Branch Manager of Foster and Kleiser, was a confessed embezzler.

THE COURT: You are proposing to show that your manager was an embezzler?

MR. CLARK: Yes, sir, a confessed embezzler.

(Testimony of August F. Lausen, Jr.)

THE COURT: And for that reason he became incensed against you—which is often the case—and for that reason you can not call him. Just for what?

MR. CLARK: The rule is, as we understand it, your Honor, that when we put a witness on the stand, we vouch for his credibility. That is one phase of the question. That is one reason why we want to show formally and by definite proof the character of man that this branch manager was. Now, the other rule is this: Inasmuch as he was branch manager and conducted these operations, which we claim were unauthorized and contrary to the policy of the company, if we do not produce him in corroboration of the testimony which is now being given from the stand, the inference arises that he would be adverse to us, and we have a right under the authorities to offset that inference by showing the character of man the branch manager was.

THE COURT: Well, it is only an inference that you think yourself at liberty to combat. If you can show that the person is unfriendly to you—if that is the case—or that differences exist between you, why, that's that. But I do not see why you do not bring him on the stand, if he has already put it in writing.

MR. CLARK: He has. He has put it in writing.

THE COURT: Well, why don't you bring him up and let's have it—hear what he has to say. You can go no further than to show unfriendliness between you.

MR. CLARK: Well, we can't even show unfriendliness, your Honor; there has been no contact, as such.

THE COURT: All right; that settles it then. Proceed.

(Testimony of August F. Lausen, Jr.)

To which ruling and remarks of the Court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 211.

The defendants further duly and regularly excepted to the question of the Court as to why the defendants did not call Mr. Musaphia, and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 212.

With the approval of the Court, it was thereupon stipulated that any evidence offered by Mr. Clark on behalf of Foster & Kleiser Company should also be considered as offered by Restop Realty Company, and that any questions as to which objections should be sustained and an exception reserved by one defendant should be considered to be reserved by both and that any witnesses examined by Mr. Sterry on behalf of Restop Realty Company should be considered as examined by Mr. Clark on behalf of Foster & Kleiser Company.

THE COURT: What does the plaintiff think about this proposition?

MR. GLENSOR: May it please your Honor, I feel that there is no evidence here to show that anything of an unauthorized nature was done by their manager in Los Angeles. It has not been shown what his authority was. This witness has said that when he discovered these acts that had taken place against the De Luxe Advertising Company, he said to his manager, "It is contrary to our policy;" but there is no evidence to show whether it was within or without the scope of the manager's

(Testimony of August F. Lausen, Jr.)

authority. Now, they want apparently to prove the guilt or innocence of their Los Angeles manager on a collateral question, one on which we have no knowledge, and try him in his absence. We are not interested in the gentleman at all. If he had known anything that we wanted to know, we would have called him and put him on the stand and let him testify, no matter what his character was, and let the jury decide whether to believe him or not. We did not hire him as Foster & Kleiser's manager and we did not discharge him, and we know nothing about his alleged embezzlement. But I do not want to be drawn into the trial of a collateral matter here to try some man in his absence on a question of his guilt or innocence of a crime. Furthermore, if the said gentleman was a confessed embezzler, then handcuffed to him we must send out of this court room Foster & Kleiser, who compounded that felony, because it has appeared that they have never prosecuted him for his embezzlement. Now, if they want to show that this was outside of the scope of his authority, contrary to a written and declared policy of the company, why, there is a right and a wrong way to show it; and so far I think they have gone at it in the wrong way, by showing that somebody told him, "Why, it is contrary to our company's policy." Those are my views, if your Honor please.

The defendants and each of them then and there duly and regularly assigned the conduct of plaintiff's counsel in arguing the merits of Foster & Kleiser Company not prosecuting Mr. Musaphia, as misconduct and duly requested the Court to instruct the jury to disregard said argument. The Court refusing to do so, the defendants

(Testimony of August F. Lausen, Jr.)

then and there duly and regularly excepted to the failure of the Court to so instruct the jury and defendant Foster & Kleiser Company still excepts thereto and here designates as Exception No. 213.

Witness Continuing: Mr. Musaphia was not discharged. He resigned in July, 1928. I have not had any contact with him since. I do not know where he is. As far as I know, the general office has had no contact with Musaphia since that time.

From 1917 on down to the present time the policy of Foster & Kleiser Company with respect to leasing was to lease for our use all of the advantageous outdoor advertising sites that were available where the traffice was heavy and where the sites would be of value to an advertiser. That is the general policy of the company in the entire Pacific Coast area in communities in which the Foster & Kleiser Company does business. We do not lease locations for the purpose of preventing competitors from getting them. We had need at all times for all the locations which we leased or attempted to lease either at the time we leased them or some time thereafter. Our need for locations was quite great. During all the years from 1921 on up to the time of the depression we had need for pretty nearly every location that we could acquire. The tight district that has been referred to in this case was that close in area in which the traffic was heaviest. During the period from 1917 down to the time of the depression in the fall of 1929 Foster & Kleiser never had more locations than it needed in the tight districts in the Pacific Coast area, and during that period it never had as many locations as it needed. The policy of the com-

(Testimony of August F. Lausen, Jr.)

pany with respect to sales was to contact every possible user of our medium and endeavor to induce him to use it whether he was using it on the boards of some other outdoor advertising plant owner or not. We endeavored to sell our service. From 1917 down to the present time our policy with respect to leases and locations of competitors was really no different from the policy regarding any location. If there was a competitor on the location and that location became available through the expiration of a lease or lapse of a lease or for some other reason, we endeavored to secure that least at the proper time. It was the policy of Foster & Kleiser Company from some time in 1922 onward to keep in contact with competitors' locations. Our policy was to keep in contact with all of the secured space that was available or might become available for outdoor advertising locations, and to have knowledge, if we could get such knowledge, of every site that might have advertising value. It was not the policy of the company to keep in touch with and to contact frequently competitors' locations and with the lessors of property to competitors for the purpose of making those lessors dissatisfied. The purpose of those contacts was to keep informed as to the condition surrounding those locations so that we might be in a position to bid on them at any time that might become open for a bid. I never heard of any instances of a branch taking leases from competitors before the termination of the lease rights of the competitors. It was not the policy of Foster & Kleiser Company from 1917 down to the present time at any time to take competitors' leases or locations, whether we wanted them or not. The policy was to get those locations if we

(Testimony of August F. Lausen, Jr.)

could get them at the right terms when such locations became available. We never leased any locations if we did not need them or never would need them. The policy of the company was to refrain from going into scenic spots for outdoor advertising structures. If there was a lake or mountain or particular boulevard of a particular scenic value, for example the Columbia River boulevard, we refrained from putting our advertising structures along those places. Foster & Kleiser Company has gone out and leased property of scenic character for the purpose of preventing its use for outdoor advertising purposes. For instance, for a considerable distance along the Skyline Boulevard running out of San Francisco and extending to the outskirts of the city and even beyond, we leased long stretches along the boulevard simply to control so that we would not put anything on it and nobody else could put anything on it. That was not done for the purpose of preventing progress by our competitors but it was done to protect our own business. If the Skyline Boulevard had been a mass of advertising structures immediately after it was opened for traffic, no matter how good or how bad those structures were, it would have caused resentment and we felt that outdoor advertising did not belong there. There were several other instances that that policy was followed out by the company. The Columbia River Highway is a very beautiful highway and the people of Portland took great pride in it. At that time we were not located there. Mr. Kleiser took an active part in that civic proceeding and Foster & Kleiser Company agreed not to lease any property or put any signs along the highway. A number of the property

(Testimony of August F. Lausen, Jr.)

owners along there did the same and agreed not to lease their property for advertising purposes. It was the policy of the company from 1917 to 1932 to tie up and carry as secured unbuilt property everything we could use. A reserve of unbuilt space was required in the conduct of the outdoor advertising business. I can't speak for any other company or any other operator but our experience has taught us we should have anywhere from twenty to twenty-five per cent available space so that if we lose a location, which we are constantly doing, we can move our structure from this location to another location so as to keep the display intact and carry out the contract. The loss of locations is due to various causes; probably the most frequent one is change of ownership. Foster & Kleiser Company has had experience in every place it operated with the change of ownership and its effect upon its locations. Property in Los Angeles at one time was moving very, very rapidly. There was a boom on here for several years and property was changing hands almost overnight. We would lease a piece of property today and would be informed a week or month after that there was a change of ownership and many times we had to move our structures almost immediately after their erection. This turnover in property in Los Angeles had a very marked effect upon the Foster & Kleiser Company building program. It was very hard to keep our footage from shrinking to say nothing of expanding. We started

(Testimony of August F. Lausen, Jr.)

to rebuild our plant in Los Angeles in 1918. That operation was confined to the immediate plant that we had taken over. After we had taken down about a third of it the capacity had shrunk and besides that the volume was then commencing to increase and it was increasing very rapidly for a number of years so that it was very difficult, first, to maintain our footage and, second, to increase it. The movement of our plant at one time reached practically five per cent a month or 100% movement in twenty months. We did not move every location but we moved the aggregate of the total of our plant every twenty months due to the loss of locations from the turnover of real estate. As Foster & Kleiser Company has conducted its business, it has attempted to maintain a reserve of about twenty to twenty-five per cent open built space all the time. That is space with advertising structures on it which has not been sold under contract. There are times that it might run as low as fifteen per cent unsold or maybe ten, but the normal open space runs between twenty and twenty-five per cent. We keep our plants built up to that capacity so as to be able to handle any order that might come to us unexpectedly or at any time. With respect to the policy of acquiring locations which could not be developed or used at all, the only locations that I know of of that character acquired by Foster & Kleiser are those that are leased so as to insure advertising value of the property adjoining.

(Testimony of August F. Lausen, Jr.)

Foster & Kleiser Company was the first in the outdoor advertising field in the poster business in the Pacific Coast area. I think the first competition that they had was at the time the Union Advertising Company began business here in Los Angeles. It has been the experience of Foster & Kleiser Company that when a competitor, either in the paint field or in the poster field, comes into business that we begin to lose locations. The company has attempted to protect itself against such losses. We try to have a proper lease but even with that sometimes we lose locations because of a change in ownership. Generally we try to tie up these locations in such a way that the other men can't molest them. When we lose our locations, due to a competitor coming into the field, we have to remove our structures.

Prior to the acquisition of the LaFon System by my company in 1921, there was considerable competition for sites in Los Angeles. LaFon tried very hard to get our locations and we were competing for unsecured locations. I have read bulletins Nos. 74 and 242 of Foster & Kleiser Company. I signed the original of Bulletin No. 242-A.

Said Bulletin No. 242-A was thereupon offered and received in evidence, read to the jury and was marked Defendants' Exhibit WWW in evidence. Said Defendants' Exhibit WWW is in words and figures as follows:

(Testimony of August F. Lausen, Jr.)

[DEFENDANT'S EXHIBIT No. WWW.]

OFFICE BULLETIN
NO. 242A

June 26, 1924.

FOSTER AND KLEISER COMPANY

Los Angeles

San Francisco

Seattle

Portland

Oakland

San Diego

Tacoma

Long Beach

Sacramento

Fresno

Medford

Re: LEASE DEPARTMENT CONTACT
SCHEDULE

Gentlemen:

In handing you herewith Bulletin No. 242, dated today, over the signature of Mr. Haynes we wish to call your attention again to the fact that a very considerable por-

(Testimony of August F. Lausen, Jr.)

tion of our income is spent for rentals, salaries of the leaseholders and unbuilt space.

We have gone over very carefully the leasing system with Mr. Haynes and we are hereby approving the ideas embodied in the bulletin attached, with the provision that the responsibility of properly protecting each territory rests entirely upon the branch manager. Generally speaking, however, the formula set forth in the attached bulletin can be made applicable to each branch in line with the curtailment of every possible expense.

The Lease Department is one which should be most carefully analyzed and studied by each branch manager for we feel that not alone can the rentals be materially reduced, but that it will not require as many outside men to give us all the protection that we need nor the amount of inside help to properly maintain the system at all time. We feel that much saving can be accomplished by the careful analysis of the Leasing Department and reassigning the work.

Each branch manager should be intimately acquainted with the details of the leasing department. In the larger branches where there are lease department managers the branch manager should confer with the lease department manager at least once a week and go over everything pertaining to the lease Department. The branch manager should look at the new leases as they come in so that he may be assured that he is getting the proper kind of

(Testimony of August F. Lausen, Jr.)

leases as to form and that his rentals are actually kept at a minimum. He should know beyond a doubt that his territory is properly covered. The branch manager alone is responsible to the General Office for the proper and economical conduct of the Lease Department as well as all other departments.

If there is sniping going on in your city every effort should be made to secure the locations on which the snipes are being pasted and either convert them into 24-sheet or three sheet posting locations or if they cannot be so used clean them up and stencil "Post no Bills." Nothing in a city or town looks worse than daubs and snipes.

Hoping this matter will receive the careful attention which its importance demands, and that from now on we shall see a substantial decrease in the space rentals and expenses connected with conducting the Lease Departments without in any way letting down on the protection which we need and must have at all times, we are

Very truly yours,

FOSTER AND KLEISER COMPANY

AFL*IM

A. F. Lausen, Jr. General Manager

No. 5673-C. Special Site vs. Foster & Kleiser Deft
Exhibit No. WWW Filed 1/15 1935. R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Albert L. Lewis)

January 16, 1935.

Thereupon

ALBERT L. LEWIS

was called as a witness on behalf of the defendants, and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I am now the Pacific Coast representative of the Donaldson Lithographing Company of Newport, Kentucky, and have been for sixteen years. Before that I was employed by Foster & Kleiser Company at Los Angeles in the selling end of the business. The Donaldson Lithographing Company have not manufactured what is termed the stock poster for twenty years or more. At one time the Donaldson Lithographing Company as well as other lithographers manufactured stock posters. A stock poster is a poster that was sold outright to an advertiser without any consideration of space entering into the thing and he controlled it completely. A stock poster was designed with a special design on it for a shoe merchant for example, and he could have his name printed on it afterwards and use the poster to advertise his business. Since I have been Pacific Coast representative of the Donaldson Lithographing Company it has been engaged in selling what we call service posters, which is a complete service consisting of both posters and space. Each year for various lines of business they develop a series of designs carrying an advertiser through a twelve-months' cam-

(Testimony of Albert L. Lewis)

paign. This was sold to an advertiser along with the space for the boards themselves and a contract made to carry along for a period of time. The Donaldson Lithographing Company actually sold the space on outdoor advertising boards upon which these posters were to be posted. The advertiser paid for the poster. There were some cases where the space might have been purchased or the poster might have been purchased for the advertiser's account, but the advertiser paid for it eventually. Posters might have been bought for an advertiser's account by a poster plant but the poster plant in reality did not purchase the poster. They bought it for the advertiser. The Donaldson Lithographing Company has never sold its posters to an outdoor advertising plant directly. They have sold them indirectly in the way I have just described, that is, the plant might buy the poster for the account of the advertiser. Donaldson has followed that policy as a matter of convenience more than anything else so that one bill could be rendered to the advertiser for the entire account. Donaldson does not sell more than one service poster or one series of designs to more than one merchant in a community and has never done so during the time I have been connected with the company. Donaldson supplies its posters to advertisers when they are bought by a plant owner for the advertiser's account. It has done so all over the United States and on the Pacific Coast. There was an instance in the Northwest of a so-called independent plant owner selling a Donaldson poster which we called a cooperative poster. A cooperative poster is one sold by the Donaldson Company to a manufacturer and a contract is made with the

(Testimony of Albert L. Lewis)

manufacturer whereby Donaldson would go out and sell to the manufacturer's dealers. For example, the Donaldson Company would sell posters to Kuppenheimer, the clothing merchant, and then Donaldson would agree with Kuppenheimer to go out and call on the Kuppenheimer dealers and induce them to buy the space upon which to post that poster.

THE COURT: If it is important for the court to understand that, you had better elaborate it; I would take a specific case and start in at the beginning. I don't understand.

The witness continuing: Kuppenheimer is a manufacturer of men's clothes. He wholesales them to retailers for resale. The Donaldson Lithographing Company would make a poster of any design that Donaldson agreed upon with the Kuppenheimer people and sell that poster in large quantities to the Kuppenheimer people outright. We attempted to retain the control of the posters inasmuch as we were interested at all times in getting a commission on the space. As part of Donaldson's agreement with the Kuppenheimer people, Donaldson then attempted to sell or induce the local distributor in Oakland, California, to buy from a outdoor advertising company the space on the boards upon which to display the posters that Kuppenheimer had bought from Donaldson. The idea would be that the local dealer in Oakland would pay for the space on the plant in Oakland and Kuppenheimer would pay for the poster that had been purchased from Donaldson. That is a cooperative account. When Donaldson had induced the local dealer to buy space on some outdoor advertising plant, we would not supply the posters unless Donaldson

(Testimony of Albert L. Lewis)

got compensation for the space. That compensation was 16-2/3% and was paid by the poster plant upon which the paper was displayed. The cooperative poster was sold by Donaldson in such a way as to derive a commission for Donaldson on the advertising space on the poster plant on which the poster was displayed. The plant owner paid that. In some cases we sold posters direct to an advertiser where we had absolutely nothing to do with the space in any way 'at all, as in a large quantity. The Donaldson Company was in the lithographing business and would bid for business here in Los Angeles against any other lithographer and sell the posters to anybody who was able to buy them if it got the bid, and would make posters for anybody able to pay for them. Those were not service posters and they were not the cooperative posters. During the time that I have been the Pacific Coast representative of Donaldson there has never been an agreement of any kind, express or implied, that Donaldson would use only the boards of Foster & Kleiser Company for the displaying of the posters sold by it, whether they were cooperative posters or the special poster or the poster service. There was never any such agreement. As a matter of fact, Donaldson actually used the boards of independent plants for the display of these posters on the Pacific Coast. We have used independent plants on several Florsheim contracts up in Seattle and in Santa Ana. The plant used at Santa Ana was Young & Elliott. They had some boards in Long Beach and we posted some there. We collected a commission from Young & Elliott for them. In the Northwest we displayed paper on the plant of the C. E. Stevens Company. That company

(Testimony of Albert L. Lewis)

did not pay Donaldson a commission on every occasion. There were several accounts at one time where we did not have control of the paper where it would be sent out to an advertiser direct. If we had no control of the paper we could not control these commissions, but wherever we had control of the paper Stevens paid us a commission. When I say "control of the paper" I mean that when we made a contract with a large advertiser, like Kuppenheimer or Florsheim, our revenue came from the sale of space rather than the sale of posters. Posters were just incidental and in making a contract with a large advertiser we attempted to contract with him so that we had control of the paper, that is the lithographs, in such a way that we sent the posters to the plant owners ourselves. In most cases the commission that the Donaldson Company requires to be paid upon the space that is used for the display of the Donaldson poster service is 16-2/3% of the rates charged by the plant owners for displaying the paper. Donaldson had a letter from the Special Site Sign Company at one time, asking for what they called some stock posters which we did not have. They never asked for our service posters. That might have been what they thought they were getting but they called them stock posters and we did not sell stock posters. I know the plant of the Special Site Sign Company quite well. Donaldson sells those service posters in conjunction with the salesmen of the Foster & Kleiser Company. We would sell them in conjunction with the salesmen of any other outdoor advertising plant if they paid us a commission on the space. There is no agreement at all and never has been since I have been with the Donaldson

(Testimony of Albert L. Lewis)

Company to the effect that all the service poster business or any part of the service poster business obtained by Donaldson on the Pacific Coast or any part of the Pacific Coast would be placed on Foster & Kleiser Company plants.

CROSS-EXAMINATION

BY MR. GLENSOR:

I have been in the outdoor advertising business twenty-two years, counting the time I have been with Donaldson. During the sixteen years that I have been with Donaldson I have kept pretty familiar with the policy and business methods of that company. I go back to the home office from time to time and consult with Mr. R. D. Carrel, the sales manager. There were two Mr. Donaldsons with the company and there is only one now.

Q. Now, you testified a few moments ago that your company would sell its posters to any plant owner and that it was done all over the United States?

MR. CLARK: I object to that on the ground that that is not the testimony and assumes something not in the record.

THE COURT: Objection overruled.

To which ruling of the Court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates Exception No. 214.

A. No.

Q. BY MR. GLENSOR: Then you did not so testify; didn't you testify a few moments ago that your company would sell your service for display on the boards

(Testimony of Albert L. Lewis)

of any plant owner, whether an independent or an Association plant?

A. Yes, but we sold direct to the advertiser, not to the poster plant.

Q. Didn't you testify within the last five minutes or ten minutes that your company—

MR. CLARK: I object. The witness answered the question "Yes", and went on and explained it.

THE COURT: Overruled.

To which ruling of the Court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 215.

The Witness continuing:

I testified within the last ten minutes that my company would sell its service for display on the boards of any plant owner, whether Association or independent. That is the situation right now and always has been. It has been selling this service for about twenty years. Prior to that it sold stock posters. That was not its policy prior to the time that it sold its service as distinguished from stock posters. Prior to that time we sold posters only and had nothing to do with space. We would sell on any plant. I know what the Poster Advertising Association is and that it holds meetings and conventions from time to time and has for years, and that they have exercised and played a prominent part in the development and progress of the outdoor advertising industry. I attended a convention once in Cincinnati. I could not recall the year.

(Testimony of Albert L. Lewis)

Q. Don't you know and weren't you ever informed when you were instructed with respect to the policy of your company that the Poster Advertising Association at its convention at French Lick Springs, Indiana, way back in 1910, had passed a resolution to the effect that it was the sense of the board of directors that poster printers who are in the habit of sending out sample posters do not benefit this organization by sending their sample posters to the opposition bill posters, "opposition," meaning independents?

MR. CLARK: I object to that question on the ground that it is wholly improper and that the witness could not have received any instructions relating to the year 1910 when he did not begin to work for the Donaldson Company until 1916 or 1917, and on the further ground that the question is compound.

THE COURT: Overruled.

To which ruling of the Court the defendants then and there duly and regularly excepted and still except thereto and here designate as Exception No. 216.

A. I know nothing whatever about anything of that kind.

The Witness continuing:

I was never told that at that time and place Mr. Donaldson spoke on the motion and said substantially: "We have always refrained from sending samples of our posters to the opposition plants unless they were asked for, and on many occasions when they were asked, why, we have refused because I did not know why they should have them. I can say for our company that we will not send

(Testimony of Albert L. Lewis)

samples to any of the opposition people; in fact, I do not know how they got into the hands of the National, the National being an independent Eastern plant that was operating at that time and causing some concern to the Poster Advertising Association or the Associated Bill Posters, as it was known then." I do not know that. I was never told that my company had made any change in its policy during its existence with respect to whether they would allow their paper to be posted on independent plants or solely on Association plants. All I know is the policy of the company since I have been with them. I could not answer the question as to how much paper was placed on independent plants prior to the G. O. A. decree of 1929 on account of the date. I know there has been thousands of dollars worth of our paper placed on opposition plants throughout the United States. I can't answer since what time that was but there has been plenty of it since the date of the decree, May 7, 1929, and plenty before that.

My territory covers the whole Pacific Coast.

Prior to that decree very little business was placed on independent plants in my territory because they didn't have any plants. I think that this Stevens incident of which I spoke probably was prior to 1929. That was one instance where we sold the advertiser but did not sell the service and we did not get control of the paper but Stevens paid us a commission on this space. The letter from the Special Site Sign Company to the Donaldson Company, defendants' Exhibit UUU, in which Mr. Carrel stated that I would call on Mr. King for investigation in reference to his service in Oakland was referred to me. I did not call on Mr. King. I knew that the

(Testimony of Albert L. Lewis)

Ashby Furniture Company, for whom that request was made, had been a patron of our service. I sold them. The paper had been previously displayed on the plant of Foster & Kleiser. Just prior to this letter, I had solicited and received two contracts from the Ashby Furniture Company for our service. These two contracts in evidence are those contracts. The contracts were filled. They were for poster service. This notation on the bottom of this contract under the heading of "Remarks" is in my handwriting. I wrote that notation: "Above is for posters only. Does not include space. Ship posters to Oakland." The word "above" in the foregoing notation refers to the money figures. When the posters were shipped to Oakland, they were shipped to Foster & Kleiser and they posted them.

I make my headquarters in Los Angeles. I do not make my office with Foster & Kleiser Company. I have no office. As far as I know my company did not send samples or any information to the Special Site Sign Company in response to their request for information with respect to this proposed order for the Ashby Furniture Company. They wrote to me in regard to it. The Special Site Sign Company wanted to buy some stock posters and we did not have any. From 1924 on there was a period when we operated in connection with the Foster & Kleiser Company upon the basis that we were to receive 10% monthly on the space used for service posters, irrespective of whether we closed the order or not. During that period we got 16-2/3 per cent whenever we handled

(Testimony of Albert L. Lewis)

the credit risk; that is, when we took the billing and paid Foster & Kleiser and took our chance at collecting. That arrangement continued practically all the time that I had been the Donaldson representative out here. It is in effect today.

REDIRECT EXAMINATION

BY MR. CLARK:

I didn't call on the Special Site Sign Company because in selling an account we had to be absolutely certain that we were going to place our paper where we knew that at the end of the contract we were going to be able to get a renewal order, and in my opinion the service that the Special Site Sign Company was rendering in Oakland was not the kind of service that we wanted to use. I had been acquainted with the Special Site Sign Company prior to that. I had been in the habit of going to Oakland four or five times a year all the time I was with Donaldson.

RECROSS-EXAMINATION

BY MR. GLENSOR:

In my opinion the kind of service that I would get would not justify a renewal order. I didn't understand that the Special Site Sign Company was losing its sites with fair regularity and was being moved off the locations from time to time. I knew nothing about that. I suppose that if a bill poster is being moved off of his sites all the time that it affects his relations with his customers. I

(Testimony of Albert L. Lewis)

didn't know that Foster & Kleiser had kept a card index on every site of the Special Site Sign Company and was contacting it at regular intervals during the lease. I knew nothing of Foster & Kleiser Company's business.

BY THE COURT:

The Donaldson Company are both manufacturers and posters and sellers of poster space. We are really an agency. We make the papers. It is our paper. The part of their business from which they derive their greater revenue is this commission we secured on space from the various advertisers. We were regularly paid for the manufacture of posters. The policy of the Donaldson Company as I have described it has not changed during the period of my connection with the company.

REDIRECT EXAMINATION

BY MR. CLARK:

We are practically in the same position as an advertising agency, except that we manufacture posters along with the selling of the space. The Donaldson Lithographing Company manufactures the posters and sells them on restricted terms and in addition to that buys the space upon which to display them. We sell the space to the advertiser and in turn buy the space from a poster plant to display it and receive a commission. The advertising agency does substantially the same thing except that it does not manufacture the posters.

(Testimony of August F. Lausen)

Thereupon

AUGUST F. LAUSEN,

recalled as a witness on behalf of defendants, testified as follows:

DIRECT EXAMINATION RESUMED
BY MR. CLARK

A standard set showing is comprised of a certain number of panels so distributed throughout the plant as to give a complete coverage of the city in which that plant is located. The plant is divided into several standard set showings according to the capacity of the plant. There is no difference in the advertising value between standard set showings in the same plant. They are both equal in value. If the Union Oil Company should select a standard set showing in Los Angeles on the first of January and post its paper, and then the Standard Oil Company of California should select a standard set showing on the first of February and post its paper, the two oil companies would have the same value from an advertising standpoint on that plant. Foster & Kleiser Company began to use standard set showings probably twenty years ago when that method of selling poster advertising was adopted by the association of which those plant owners were members. The standard set showing does not permit of the selection by an advertiser of individual panels. Your standard set showing is divided into parts which are commonly called a full showing, a half showing and a quarter showing. An advertiser should have the right to select one half showing out of any number of half showings that we might have open for sale at that particular time.

(Testimony of August F. Lausen)

Foster & Kleiser Office Bulletin No. 130, dated September 4, 1923, was thereupon received in evidence and marked defendants' Exhibit XXX in evidence, and is in words and figures as follows, to-wit:

[DEFENDANT'S EXHIBIT NO. XXX.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN

130

San Francisco, Cal.,
SEPTEMBER 4 1923.

Foster and Kleiser Company,
San Francisco,
Los Angeles,
Seattle,
Portland,
Oakland,
Tacoma,
Sacramento,
Long Beach,
Medford,

(Testimony of August F. Lausen)

Wm. G. Fahy Co., Fresno.

Gentlemen: Subject: ADHERENCE TO STANDARD SET SHOWING PLAN.

In going over a number of cooperative reports Number 1 and Number 2 which were the result of checking various poster displays with advertiser's representatives we note in many cases, especially in small towns where one or two posters constitute the showing, complaints on the part of the advertiser's representatives with regard to a particular location and often times a request to change the location to meet the representative's personal opinion.

We further note that in many cases our Cooperative Sales Report shows that our representatives have made promises that these changes of location will be made on the next month's posting.

We would caution you that if you have up to this time authorized any of your cooperative salesmen or any one checking displays with the advertiser or his representative to agree to make such changes the promises made should be faithfully performed. However, in the future instead of agreeing to change a location we should explain the theory and practice of the standard set showing to the adviser's representative to the end that he understands and accepts the showing as laid out and thereby eliminates the necessity of changing any location. OUR LOCA-

(Testimony of August F. Lausen)

TIONS MUST FIRST BE RIGHT — WE MUST THEN ADHERE STRICTLY TO OUR STANDARD SET SHOWING PLAN. We do not believe any of the Coast wide displays warrant any change of locations in the small towns under our method of operation. It may be well for you to give this information to all your co-operative salesmen who check with the advertiser's representatives from time to time so that they may be fully familiar with our method of operation.

We are quoting here a standard set showing plan as set forth in our "Poster Advertising on the Pacific Coast" page nineteen:

"The plants of Foster and Kleiser Company are laid out in a given number of set showings, each set showing being as good as any other. Great care is exercised to see that all showings are equally balanced as to the number of head-on as well as down-town locations, and, in fact, every precaution is taken to make and keep all showings exactly equal in advertising value. These set showings comprise a given number of full showings.

(Testimony of August F. Lausen)

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN

San Francisco, Cal.,

#2:

“Full showings in larger cities are divided into three-quarter, half, and quarter showings which gives the advertiser the opportunity of covering any city in varying degrees of intensity. A half showing, for instance, differs from a full showing in having half the number of panels, and yet the same distribution that serves to cover the whole city is obtainable. A quarter showing bears the same comparison to a half showing”.

While this applies generally to large cities it also practically applies to all small towns especially where the advertiser is using a Coast wide display or covering a complete district or large portion of a district out of any branch.

Inasmuch as all our showings in small towns and large cities are laid out on the standard set showing plan and

(Testimony of August F. Lausen)

for the reason that all our panels are carefully located and carefully placed — 98% of them being within the corporate limits of each city and town and only 2% on the highway, 93% of them on primary streets, only 7% of the whole being on secondary streets — there should be no requests at all for changes in locations. Naturally there are going to be some panels in small towns better than others but by taking our service on the Coast as a whole each advertiser has an even break with each other advertiser, and while in some towns in some instances each individual panel may not be as well located as in another yet on the whole they are evenly balanced and each advertiser has a very complete coverage.

We further note especially with the Union Oil reports that a great many of their requests are for change of locations from the present ones to highway showings. It should be remembered that a rule of the Poster Advertising Association and the policy of our company is to eliminate as far as possible posters showing strictly to the highway as it is our purpose and endeavor to have our poster panels located within the corporate limits of cities and towns or in the congested areas close to those corporate limits.

We have also had complaints which state that the advertiser's representatives are not able to find poster locations in checking without one of our representatives. This is possible on account of the enormous amount of take

(Testimony of August F. Lausen)

downs and removals which we have on the Pacific Coast owing to the great activity in building which makes it impossible for us at all times to get the information after the change of location on account of take downs and removals to the advertiser between the time that the poster is moved and the time the advertiser's representative makes his check. It should be remembered that in the City of Los Angeles alone our take downs and removals on account of building operations run frequently in excess of 6000 feet per month. Last month we moved over 7,000 feet of structures. This is fifteen miles of advertising structures end to end to be moved each year in that city alone. On the Coast as a whole the activity is not so great as it is in Los Angeles. While this is abnormal as compared to the balance of the country it is safe to say that we move an average of 15,000 feet per month on the whole Coast or a total of over thirty miles of advertising structures end to end during the year.

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN

San Francisco, Cal.,

#3.

When a complaint comes to you from an advertiser checking his display without one of your representatives to the effect that he could not find the display as listed the

(Testimony of August F. Lausen)

foregoing paragraph is a reasonable explanation and should be readily understood by the advertiser.

It is the policy of our company to furnish one of our representatives to check displays with the advertiser and we should encourage the advertiser to avail himself of this service. Our representative should be thoroughly instructed with reference to promising any changes of locations and it would be well for you to instruct all those in your branch who at any time do any checking with advertisers or their representatives as to the method of our operations in order that they may better explain our purposes and the standard set showing plan to the end that all necessity for a promise of change of location may be eliminated.

We should exercise greater care and effort to continue to merit the confidence and business of the advertiser already on our books than we would put forth to interest a new user in the value of our services.

Very truly yours,

FOSTER AND KLEISER COMPANY

W. F. Thompson

W. F. Thompson

Ass't. General Manager

WFT*AP

No. 5673-C. Special Site vs. Foster & Kleiser Deft
Exhibit No. XXX Filed 1/16 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of August F. Lausen)

Said exhibit was thereupon read to the jury.

Witness continuing:

At my conversation with Mr. King at the Palace Hotel in March, 1920, I did not count off to Mr. King the competitive plants that Foster & Kleiser Company had put out of business. I did not count off on the fingers of my hand the competitive plants we had put out of business. I did not state to him that we had up to that time put five competitive plants out of business. I never put any plant out of business. We had not acquired five competitive plants by March 19, 1920. I have informed myself on that.

Foster & Kleiser Company has a sales office in New York. It was first established in 1925. We have had the same sales representative there ever since. We placed a representative in Chicago about 1927 or 1928. He is there now. I have spoken of the National Sales Department of Foster & Kleiser Company. The name was subsequently changed to the General Sales Department. It was changed simply as a matter of convenience and for no particular reason. This Foster & Kleiser office bulletin No. 145, which you show me, is my bulletin. I wrote it and signed it.

The bulletin referred to by the witness was thereupon received in evidence and marked defendants' Exhibit YYY in evidence, and is in words and figures as follows, to-wit:

(Testimony of August F. Lausen)

[DEFENDANT'S EXHIBIT No. YYY.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 145

San Francisco, Cal.,
October 31, 1923

FOSTER AND KLEISER COMPANY

San Francisco	Mr. Edwards
Los Angeles	Mr. Montgomery
Seattle	Mr. G. A. Sample
Tacoma	Mr. Everett
Portland	Mr. Haynes
Long Beach	Mr. Zamloch
Sacramento	Mr. Olmsted
Oakland	Miss Salin
Medford	

Wm. G. Fahy Co. Fresno

Gentlemen:—

Subject: CHANGE OF TITLE OF NATIONAL
SALES DEPARTMENT

Beginning November 1, 1923 our National Sales Department will be discontinued and the work which has been done by that Department will be conducted by the General Sales Department, of which Mr. Montgomery

(Testimony of August F. Lausen)

will be the head. The General Books will handle all the accounting of the General Sales Department.

Yours very truly,

FOSTER AND KLEISER COMPANY

A. F. Lausen Jr

A. F. Lausen, Jr.

General Manager

AFL:IM

No. 5673-C. Special Site vs. Foster & Kleiser Deft
Exhibit No. YYY Filed 1/16 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Witness continuing:

The general books referred to in that bulletin are the books from the General Office as distinguished from the books of any branch. The functions of the General Sales Department under its new name did not differ from the functions of the National Sales Department.

The Poster Advertising Company had a representative on the Pacific Coast. I don't remember exactly when they established their office but it is quite a number of years back. They maintained it up to the time of the organization of the General Outdoor Advertising Company in 1925. The General Outdoor Advertising Company continued that representative here on the Coast until

(Testimony of August F. Lausen)

about 1929. The National Outdoor Advertising Bureau has a representative located in San Francisco. The representative of the Poster Advertising Company on the Pacific Coast was engaged in soliciting contracts to display advertising matter upon outdoor advertising plants. Foster & Kleiser were doing that also. If the Poster Advertising representative got a contract for the display of advertising matter on outdoor advertising plants in the Pacific Coast area, the Poster Advertising Company got the commission. If Foster & Kleiser Company had obtained and closed a contract for displaying the outdoor advertising matter we would not have paid a commission to the Poster Advertising Company. During the time the General Outdoor Advertising Company had a representative on the Coast, if they created outdoor advertising business and it was displayed on the plant of Foster & Kleiser Company, the commission was paid to the General Outdoor Advertising Company. If Foster & Kleiser Company got the business and posted it on its plant, it did not pay a commission to the General Outdoor Advertising Company. When an agency which is a member of the National Outdoor Advertising Bureau gets an account on the Pacific Coast and that contract is put through the Bureau for execution on Foster & Kleiser Company's plant, we pay a commission to the Bureau. If Foster & Kleiser get the business direct, they would not pay a commission to the Bureau. If the Bureau sends us a contract, we pay the Bureau a commission of 16-2/3 per cent. If Foster & Kleiser Company had obtained the business itself, without the intervention of an agency or the Bureau, we would not have paid a commission at that time. The

(Testimony of August F. Lausen)

ultimate result is that Foster & Kleiser Company has been in competition in selling with the Poster Advertising Company, with the General Outdoor Advertising Company and with the General Agency successively up to a period which, I think, was in 1931. That is the time when Outdoor Advertising, Incorporated was organized. Outdoor Advertising Company, Inc. is a company which does nothing but sell the outdoor advertising medium. It does not sell for any particular plant. It is a national representative of a medium which is organized for profit and to create business for those who are engaged in the outdoor advertising business throughout the United States. The General Outdoor Advertising Company has not maintained a sales representative on the Pacific Coast since 1929. There has gradually grown in the outdoor advertising industry a full recognition of the General Outdoor Agency.

In my experience in the outdoor advertising business I have found that sniping is most objectionable in the downtown or thickly populated portions of the city where the traffic is heaviest; that is the district which we at one time called our "tight" district. From my experience in the outdoor advertising business I can say that sniping locations frequently develop into structures called "bill-posting" structures. You might call them poster panels if they are built in panel size, but the ordinary structure that a bill poster put up was not of a standard length and was not even of a standard height, and he would post papers and posters of various sizes on it. In other words, the panels were frequently used on these locations for the purpose of posting snipes.

(Testimony of August F. Lausen)

CROSS EXAMINATION

BY MR. GLENSOR.

We did the largest portion of the outdoor advertising business on the Pacific Coast.

Q Yes. You never monopolized it, did you?

MR. CLARK: Object to that on the ground that that calls for a conclusion of law.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 217.

A I would say I don't believe we monopolized it, no, sir. We never tried to monopolize it.

Witness continuing: We never used any unfair methods and never desired to use any unfair methods in our operations as between us and our competitors. It was our object at all times in operating against our competitors to be perfectly fair.

Q BY MR. GLENSOR: Now, you gave considerable testimony yesterday about these associations. I want to ask you a few questions about those trade associations; and I suppose we do not need to lengthen this examination by continuously distinguishing between them. We will just call them "Associations", but if we strike a point where there is any distinction, why you just call my attention to it, will you? There was a paint association and a poster association. You are quite familiar with the poster association, aren't you?

A Yes, sir.

(Testimony of August F. Lausen)

Witness continuing: The Associated Billposters at one time was an association of men engaged in the billposting business. The General Outdoor Advertising Company was the largest owner of memberships having over one thousand. There came a time when my company was the second largest owner of memberships in that association, having about five hundred ninety memberships. We did not own any plants on the Pacific Coast that were not franchised plants. We regarded those memberships and franchises as being a valuable adjunct to our business.

The association that I first knew was the Associated Billposters and Distributors of the United States and Canada. I think that was the name that was given to it when they first formed an association. That name was changed on November 11, 1912 to the Poster Advertising Association Incorporated. That association continued, according to my recollection, until 1925, when it, with the Outdoor Advertising Association, was merged and made into one association called the Outdoor Advertising Association of America, which is its present name.

These associations closed no contracts. I distinguish between closing contracts and developing business in that the association was not engaged in the development of any particular account or in any advertising campaign. Its function was to improve the media and to endeavor to create an interest by gathering together all the information regarding the plant belonging to its members and compiling data in the market areas in all matters of that kind and put it in such shape that it would be in convenient form to be used by the national solicitors who solicited advertising and by the advertisers themselves.

(Testimony of August F. Lausen)

Q BY MR. GLENSOR: There was a time, was there not, when the Poster Association, regardless of the name it had been called at that time, was limited to one membership or franchise in each city or community?

A I think there was and that that limitation was on from its beginning up to about 1916 or 1917.

Q Now, we will confine ourselves to a period prior to 1916 for the time being. Prior to 1916 they had a classified membership with different dues, did they not, for different classes of members according to the population?

MR. CLARK: We object to that question on the ground that it is irrelevant, immaterial; it being in the record now that the plaintiff in this case was not organized, did not come into existence until December 2nd, 1916.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 218.

It was thereupon stipulated that all testimony with respect to the Poster Association, regardless of the name it had been called at the time, prior to December 2, 1916, should be deemed to be subject to the same objection on behalf of the defendants and that an exception to the ruling admitting such testimony would be deemed to have been made by and reserved to the defendants and each of them.

(Testimony of August F. Lausen)

A Prior to 1916, if a member built a plant in another city where there was another association plant, he was subject to discipline and fine. Consequently there was never more than one association plant in a city. In 1916 there was a change and subsequent to that time there could be more than one association plant in one town.

Q. Why was the change made in 1916?

MR. CLARK: Now, that is objected to, if the Court please, as long as the change was made, on the ground it is wholly irrelevant and immaterial.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 219.

A There was handed down in 1916 a decree of the Federal Court, and I am inclined to believe that it was the result of that decree that the change in the rule was made. That is my impression.

That decree was handed down by Judge Kenesaw Mountain Landis of Chicago and was known as the Landis decree. It was handed down in 1916, under the Sherman Anti-Trust Law. I familiarized myself with it.

It was thereupon stipulated that neither Foster & Kleiser, Incorporated, Foster & Kleiser of California, Foster & Kleiser Company, nor any of the defendants in this case were defendants in the proceedings leading up to the Landis decree.

(Witness continuing:)

I presume that the Associated Bill Posters were permanently enjoined and restrained, among other things,

(Testimony of August F. Lausen)

from "agreeing together or with one another, expressly or impliedly, or from adopting any rule or regulation to the effect that any person, firm or corporation engaged in opposition to any member of said defendant Association or any of its subordinate associations in the business of posting posters transported in interstate or foreign commerce shall not be eligible to membership in said defendant Association." Subsequent to the handing down of that decree it was entirely possible for more than one franchised association plant to be in a town. I have no knowledge of any town on the Pacific Coast in which there was more than one franchised association plant. We had memberships in the association for as many towns as those in which we operated. I think that was close to 600 at one time. There was never more than one in any of our towns. I have no knowledge of anything outside of the Pacific Coast; therefore, I cannot say whether there was any town in the United States in which there was more than one franchised plant in the association subsequent to the Landis decree.

The plant owners were not really developers of the business. They sublet or sent to other plants very little business in proportion to the total amount of business that was executed by the plant owners. The statement in the letter of February 2nd, 1920, addressed to G .E. Miller & Company, plaintiff's Exhibit 3-A in evidence, to the effect that the company did over 90% of the outdoor advertising business in its territory and controlled more than 90% of the valuable advertising locations, besides exclusive connections for the interchange of business throughout the United States and Canada with more than

(Testimony of August F. Lausen)

5,000 other advertising concerns, meant that we were located on the Pacific Coast and having practically 90% of the facilities there, that through our membership with the association gave us that outlet for whatever business was created from those sources. I said that the business which came from those other advertising concerns was negligible. That was the business that was actually sent out over plant owners' names.

This letter dated November 1st, 1922, signed by Mr. Kleiser offering more stock also refers to the fact that the company controlled, through leaseholds, more than 90% of the available advertising locations, and also enjoyed exclusive connections for the interchange of business throughout the United States and Canada with more than 5,000 other advertising concerns. That exclusive connection relates to the same situation as to which I testified with respect to the other exhibit. The business that we obtained from plant owners themselves, as plant owners, to us as plant owners was negligible. The business that those plant owners closed, if they did close any, came to us through the solicitors. Our selling connection with these 5,000 plant owners was through memberships in the association. The other plant owners were not obligated to send us their business and we were not obligated to send them ours after 1916. That was after the Landis decree. At that time the constitution and by-laws of the association were rewritten and the ruling were all changed. I personally am not certain as to whether there was any obligation before that. I am certain that after the Landis decree there was no obligation to hand business from plant owner to plant owner

(Testimony of August F. Lausen)

within the association. This letter of September 15, 1923, plaintiff's Exhibit 3-C in evidence, over the signature of Foster & Kleiser, states that in the 507 cities and towns in which the company operates, we hold the franchise of the Poster Advertising Association and the Outdoor Advertising Association, through which we obtain all the national business created as a result of these organizations to be placed in our field. We got all this national business from the National solicitors and also the General agencies that were creating national outdoor advertising business. Probably the majority of that business came through the National Outdoor Advertising Bureau. By 1923 the Bureau was sending out a very large amount of business.

Q But Mr. Kleiser in his letter here says, "We hold the franchise of the Poster Advertising Association and the Outdoor Advertising Association through which we obtain all of the national business created as the result of those organizations to be placed in our field." Now, is it still your testimony that those franchises did not bring you any business except through national solicitors?

MR. CLARK: We object to that on the ground that that is not the testimony. The witness did not so testify.

THE COURT: Objection overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which the defendant Foster & Kleiser Company still excepts and here designates as Exception No. 220.

A The fact that we held the franchise or the membership in these various towns brought us the business

(Testimony of August F. Lausen)

which was created by these solicitors and by these agencies; and further, for the fact that we were the only concern that was at that time, if I remember correctly, engaged in the poster advertising business at any place on the Pacific Coast.

Foster & Kleiser had one of the national solicitorships. We obtained it when we began business in San Francisco back in 1915. The national solicitorships were created by the Associated Bill Posters back in the early days. At one time there were quite a number of solicitors. I do not know whether there were 42 or not.

Q There were 42, I think, in 1911. And do you remember—has it ever been reported to you that there was a movement or an action taken, I think at the Asbury Park National Convention of Associated Bill Posters in 1911, reducing those national solicitorships to 12?

MR. CLARK: This again, if the court please, is irrelevant and immaterial. The plaintiff wasn't even in existence at that time. Neither was the defendant, in 1911, did not come into existence until 1915.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 221.

A I know there was an action taken. Probably that date is correct, I don't know, whereby a change was made in the number of solicitorships which were sponsored by the Association. I don't know whether the numbers that you stated there are correct or not, from 42 to 12.

(Testimony of August F. Lausen)

Witness continuing:

During this period prior to 1916, Foster & Kleiser, Inc. was a member of the association and Foster & Kleiser of California was also a member. The present company is now a member.

Q. And with your large interests in this Association, you doubtless know that the action of the Association in reducing these national solicitorships in 1911 resulted in litigation and in a judgment in the case of Ramsay v. Associated Bill Posters and Rankin, to the extent of \$247,000 or thereabouts, in 1929, don't you?

MR. CLARK: I object to that on the ground that it is irrelevant and immaterial; and I assume, of course, that counsel is going to prove that that judgment was recovered against Foster & Kleiser Company, otherwise I do not think I have ever heard, if I may characterize that situation, a more highly improper question put to a witness. Now, I challenge counsel to state to the court that he is going to prove that Foster & Kleiser Company was even a party to that litigation.

MR. GLENSOR: Why, of course, they were not a party.

THE COURT: Objection sustained.

MR. STERRY: I desire to assign the asking of the question, your Honor, as misconduct on the part of plaintiff's counsel.

MR. CLARK: I want to join in that.

Witness continuing: These national solicitors paid \$1,000 a year license fee to the association, during a certain period. I do not recall how long that was. I do

(Testimony of August F. Lausen)

not think it was very long. These national solicitors terminated by reason of the Landis decree. A year or two afterwards the Bureau was formed. It was an organization of advertising agencies which became members. Not all the agencies were members of the Bureau, but the Bureau was composed of agencies and the agencies when they got contracts for outdoor advertising placed them with the Bureau. Prior to 1925, the Bureau placed them with the Thomas Cusack Company. The Thomas Cusack Company displayed such advertising on its plants as the contract called for and sent the rest to other plants. I don't know whether these others were all association plants or not. They sent all the business that came to the Pacific Coast to us. I don't know of any business being sent to a non-association plant on the Pacific Coast if there was an association plant available. At the time the General Outdoor Advertising Company was formed, there was some discussion with respect to Foster & Kleiser becoming a part of that consolidation and an audit was made of Foster & Kleiser Company. However, we did not go into it. Foster & Kleiser Investment Company invested money in the General Outdoor Advertising Company and the Foster & Kleiser Investment Company is owned 50/50 by Mr. Foster and Mr. Kleiser. They put a million dollars into the G. O. A., and Mr. Kleiser was elected a director.

This contract that had existed between the Cusack Company and the Bureau was inherited by the G. O. A. I am not familiar with the details of the contract.

The contract between the G. O. A. and the National Outdoor Advertising Bureau was thereupon marked Plaintiff's Exhibit 221 for Identification.

(Testimony of August F. Lausen)

Witness continuing:

It is not true that after that setup of the G. O. A. and the National Outdoor Advertising Bureau, and after Mr. Kleiser became a director in the G. O. A., and after he and Mr. Foster invested a million dollars in it, that all of the national business which our company received came to us through the G. O. A. We got national outdoor advertising business from five or six other sources. We got business from the Charles Wrigley Company, the Outdoor Service, Inc., Sellers Company, Outdoor Advertising Associates and quite a lot more. I could name more if I could think of them. It is a fact that all the business from the National Outdoor Advertising Bureau was cleared or came to us through the General Outdoor Advertising Company. That was one of the principal sources of our national business, but we did not get all of our national business through there.

Q. Now, do you understand, do you know, whether or not under this arrangement the General Outdoor Advertising Company and Foster & Kleiser Company, and the Bureau, through this arrangement which we have just described here, did not control upwards of 80 per cent of the national outdoor advertising business in the United States?

MR. CLARK: Objected to as immaterial and irrelevant, unless counsel shows, which he has not done, in his main case, that that was done by reason of a combination or agreement of some kind among the three of them.

THE COURT: Overruled.

(Testimony of August F. Lausen)

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 222.

A. The Foster & Kleiser Company had nothing to do with anything, any contract—between the G. O. A. and the Bureau.

Q. Is it not a fact that under this arrangement the General Outdoor Advertising Company controlled 80 per cent of the national outdoor advertising in the United States; it either is a fact or it is not or you don't know—whichever it may be.

MR. CLARK: I object to the question on the ground it has already been asked and answered. Counsel is plainly asking the witness whether or not under this contract to which counsel says Foster & Kleiser Company was not a party by name, as he puts it—if Foster & Kleiser Company, the Bureau, and the G. O. A., did not control 80 per cent of the business. I further object to it on the ground that the question is unfair and misleading.

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 223.

THE WITNESS: I must admit that I am in no position to state what percentage of the business was controlled by the G. O. A. and the National Outdoor Advertising Bureau.

(Testimony of August F. Lausen)

Our arrangement with respect to paying commission from business coming to us through the Bureau and the G. O. A. was that we paid the source of the business 16-2/3 per cent commission. If the contract came through G. O. A. we paid G. O. A. or from whatever source the business came. We accepted business freely from non-bureau agencies. We have paid them various commissions at various times. We began to recognize agencies quite a number of years ago. The average percentage we paid non-Bureau agencies was probably ten per cent. We had restrictions on accepting business from non-Bureau agencies. The agency had to demonstrate to us that it was qualified to act as an agency for the particular company it was representing and that it was properly representing us to the advertisers; that it was equipped to transact business as a general advertising agency and it also had to make an application to us for recognition. If we accepted its application and recognized it as an agency, we paid him his ten per cent commission. I do not know who wrote this Bulletin No. 86, plaintiff's Exhibit 2-D in evidence. The phraseology sounds like our Mr. Thompson. I probably saw the bulletin at the time of its issuance. I am familiar with the policy that is set down there with respect to non-Bureau agencies.

I guess when Mr. Thompson says in that bulletin "In other words, if it is true that an agency actually controls the business and has the power to divert it to other channels, we should not lose this business through our own restrictions and regulations, but should recognize the influence governing the same and proceed on the basis that a man is worthy of his hire," he means that a man

(Testimony of August F. Lausen)

is worthy of his hire. I do not know what restrictions and regulations the writer of the bulletin refers to. It does not mean that we would not accept business from a non-bureau agency at all, unless it was local business which my company had not contacted and with which it had no connection, and in which the local agency had the control of the business, in which case we would take it and pay the 10 per cent. That is not the meaning of that bulletin. That portion of the bulletin: "Business accepted from an agency should be business in which we have been of no influence whatever." And "However, the local customer upon whom we have exerted no influence should be most rare indeed, as it is the responsibility of the local sales department to thoroughly cover every possible user of our medium in the territory the responsibility for sales in which is theirs", is true. We are supposed to carry every potential user that there is in the Pacific Coast area and endeavor to get his business. The subject heading of the bulletin says: "Relation of Agencies Outside the Outdoor Bureau", so I presume that is what it refers to. Just to those agencies not members of the Bureau. The bulletin as a whole means that with a non-Bureau agency, we would then take it and pay them a commission of ten per cent. If they did not show that they developed it, they would not have any connection with the account as far as we were concerned. At that time the general agencies handled very few local accounts. It was a question in our minds as to the advisability of recognizing agencies who were interested in these local accounts, due to the fact that we maintained quite an aggressive local sales force and we were paying this local force to get the busi-

(Testimony of August F. Lausen)

ness for us, and in lieu of a commission we were paying them salaries. If we recognized the agency on top of that and paid them a ten per cent commission, we would be paying a double commission. There were cases, however, where we might deem it advisable to recognize a certain agency for his effort on a particular local account, and each case of that sort was to be decided upon its merits. The National Outdoor Advertising Bureau was never interested in local accounts. Their interest and that of their members was primarily and almost exclusively in the development of large national accounts. Occasionally an agency did secure the handling of a local account appropriation, and we, at that particular time, did not feel that we should pay any agency handling local business any commission. I do not know, nor have I ever been informed of the contract or agreement by which the agency was tied to the Bureau.

Any independent plant can expand its services and produce facilities for the display of outdoor advertising. There is no restriction on any independent plant that I know of. In acquiring these plants we acquired some that were not franchise plants, and merged them with our own plants. If there were two plants in the town and we took one over, it became one plant. That would be a franchised plant and would become so under our membership. In acquiring these plants, we frequently paid more than the value of the physical assets. We paid what was considered the value of the plant to us. We did not pay more than the value of the physical assets for the purpose of obtaining the franchise. Franchises had no influence whatever in our securing these plants.

(Testimony of August F. Lausen)

In connection with sales of stock by my company, we at one time had our own salesmen sell stock. We issued a prospectus or instructions to the salesmen for information and instruction of our own salesmen. That prospectus states that franchises, leaseholds and national solicitorships are but an intangible value but at the same time are the very crux of the business and its most valuable asset. That is true. It is not true that they were the source of our national business. We placed a value on the franchise or membership because of the advantages that we got out of the association. The statement in there as follows: "For each of the 507 cities and towns in California, Oregon and Washington in which the Company operates, it holds a franchise from the Poster Advertising Association and the Outdoor Advertising Association. Through these franchises it receives from these associations all of the business which is created through them and placed in the Coast field. This is an exclusive privilege which brings to Foster and Kleiser the big national accounts from the eastern field," is a true statement, as is the statement that through the exclusive control of the leaseholds and its franchises the company is enabled to handle and control over 90 per cent of the outdoor advertising on the Pacific Coast. The statement in there: "The term 'national solicitorship' refers to the representation by the Company of national associations through which it obtains business originating in the Pacific Coast field to be placed in other fields upon which it receives a substantial sum on commission account," is true. Our national solicitorship had to do only with the business that we secured and sublet to other plant owners, for

(Testimony of August F. Lausen)

which we received a commission of 16-2/3 per cent. It did not get any business from other plants which they sold and placed with us. That was all that our national solicitorship represented to us; that is, the right to earn commissions by selling business and subletting it to other plant owners and the right to create business under the association's standards. We held these franchises so valuable because of our membership or affiliation with the association and the advantages that we derived from our membership. We did not place that value on it because of the production of business. As a general rule, plant owners through the United States were not engaged in selling. I think that at that time we were the only plant owner in the company that was engaged in the creation of national business. At that time Foster & Kleiser Company owned a majority of the plants on the Pacific Coast and by reason of the fact that we did have these facilities and we were members of the Association and that we were acquainted with all these plant owners through our membership in the Association, 90 per cent of the whole business that came to the Pacific Coast was executed by Foster & Kleiser Company. That was because of our membership in these associations and all of the other factors that go with it, the national solicitorships, our own selling ability and our connections, and the fact that we traveled to the East time and time again and interviewed not alone the solicitors but all of the advertisers as well and sold our services. The business eventually came to us through the franchises but it would not have come through unless we had the service there and unless we sold ourselves to these people. The mere fact that we had the facilities gave us the business.

(Testimony of August F. Lausen)

It is stated in this circular that in the last seven years Foster & Kleiser Company had paid approximately \$1,-150,000 more than the value of the physical assets which it obtained through the purchase of local plants and that this excess price was in recognition of the value of the franchise and leasehold accounts of the local plants. I can't say how much of that \$1,150,000 we had paid in excess of the value of the physical assets because of these franchises. I think the balance sheet would explain that.

In 1921, 1922 and 1923 we were actively reaching out for the acquisition of smaller plants. At that time we had a man that traveled around and interviewed these plant owners but not for the sole purpose of acquiring the plants. That was Blaine Klum. We bought him out in Medford, Oregon, and after that he traveled around to interview plant owners. He had other duties to perform besides acquiring small plants. He ran our country paint department and sold walls. It is not a fact that we wanted to get all of these smaller plants out of business just as fast as we could. We have no desire to get anybody out of business. We believe that a better outdoor advertising service could be rendered under a single ownership. If you are asking my opinion, I believe that is the way the outdoor advertising business should be conducted. Mr. Kleiser probably made the same assertion. I never heard him make a statement to the effect that it was cheaper to bury them than to buy them out or to crush them in the shell. I don't know whether it is a fact that through the control of leaseholds, through these franchises and other means that we did have a natural monopoly in occupying our field to the exclusion of com-

(Testimony of August F. Lausen)

petitors the same as a public utility. We presume you might call it a monopoly because we did by far the largest business, but I could not say that that was to the exclusion of anybody else, because anybody had the same right to enter the field as we had.

The following statement contained in Plaintiff's Exhibit 3-D was true at the time it was made: "Occupying this field as it does, controlling most of the desirable advertising locations and handling its business so as to give satisfaction alike to the advertiser and the public, the business of Foster and Kleiser Company is fairly comparable to that of a well organized and successful public utility corporation. As long as it is in position to serve, it obtains practically all of the big national outdoor advertising accounts originating in the eastern field through its affiliations with the large Eastern outdoor advertising companies and with the Poster Advertising Association and the Outdoor Advertising Association, from which it holds exclusive franchises for each of the cities and towns in which it operates. Competition, except in a small local way, is practically impossible for two reasons: In the first place, it would require investment of several million dollars to duplicate the Foster and Kleiser facilities for service on the Pacific Coast. In the second place, the exclusive control of desirable locations for its advertising units makes such duplication impracticable. As a result, the Company occupies its field, to all practical purposes, as effectively as the Pacific Gas & Electric Company or the Southern California Edison Company occupy their respective fields in the power business."

(Testimony of August F. Lausen)

I have often heard Mr. Kleiser make the statement that "there is no reason why Foster & Kleiser Company should not have all the desirable locations that there are on the Pacific Coast." I never heard him state that without locations competitors would have nothing to sell. That last statement is quite true, however.

With regard to Bulletin No. 74, written by Mr. Haynes, we needed that inventory in order that we might know what our competitors were doing in the territories in which we operated. We thought it was good judgment to have that information about our competitors. As general manager I authorized these various steps. I don't know of any other written instructions on the subject than Bulletin No. 74.

Referring to the statement in the bulletin, "We must do everything within our power to secure all competitive locations, whether we can use or need such locations or not. The only way to protect our investment in this business is to make competitors move and keep moving." The effect of making an outdoor advertiser move and keep moving his locations is that he will have to find another location on which to place his structure. That is a natural element in the business. I don't see any reason why he should not be able to find another location. If he can't find one he can't place a structure on it. The advertiser has a good deal to say under those circumstances. The moving of locations does not necessarily make it difficult as between us and the advertiser. The advertiser generally recognizes that that is one of the hazards of the business and realizes that he has the use of a particular loca-

(Testimony of August F. Lausen)

tion until we lose it or something else happens to it. I never felt the moving of locations to be a serious obstacle in the handling of an account. I would not say that we didn't have any difficulty because if we had a location and had to go to the advertiser and tell him that we have lost it and submit another one as a substitute, naturally there is a hurdle in sales effort. The man was sold once, then we have to go back and sell him again. I can't say that it results in a *lost* of confidence.

In issuing Bulletin 74 we did not take into consideration what effect it might have upon competitors. The cause of this particular bulletin was the fact that we had just got through a very acute siege of competition here in Los Angeles. A competitor had come into the field long after we had been established and moved us off quite a number of locations. He started his plant on our locations so this bulletin was issued to have a record of what these locations were. Mr. LaFon had had no compunction whatsoever about establishing his plant and taking our locations away from us. We bought him out in 1921 but we had gone through that experience. We did not have very many leases here in Los Angeles. What we had were simply permits and it was a very easy matter to come in and secure permits away from us and move our locations. A good deal of LaFon's plant was built upon the locations that we were using and if it is good business ethics to the other fellow to move us we wanted to play the same game. We sent this bulletin to all branches whether there was any competition there or not. We felt that our investment in the business needed protection at all times as referred to in Bulletin 74. Mr. Haynes says

(Testimony of August F. Lausen)

that the only way to do that was to move competitors and keep them moving. I would not say it was the only way but that was one way.

In 1924 when we issued Bulletins 242 and 242-A, competitors were still attacking our locations and we changed our contact schedule a little bit about that time. You can conduct posting successfully without locations in the tight districts. You can make up very good showings without any distribution in the tight districts. In making the statement in Bulletin 242 that "the only way to protest our investment in this business outside of sales effort is to make competitors move freely", was actuated by the same thing that moved us back in 1922.

Q. "We would have comparatively few worries if we could keep them outside of our tight district." How would that relieve you of worries, if you could keep all your competitors outside of the tight district, Mr. Lausen?

A. What little worry an advertising competitor gives us, why, if he was not there, that worry would not exist.

Q. You would just worry a little less if he was outside of the district, huh?

A. Yes, sir.

Q. Well, you wouldn't have to worry about him doing much bill posting, would you, if he didn't have any locations at all in the tight district?

A. I should claim that we had quite a considerable volume of business in bill posting outside of the tight district.

Q. Wasn't your effort all directed towards moving your competitors out of the tight district?

(Testimony of August F. Lausen)

A. Our effort was directed toward controlling and having under our lease every available advantageous location that was in the tight district, for the reason that we never at any time, during our experience from 1920 on when the volume of business was increasing fast, we never at any time had sufficient locations within that tight district.

Q. And the mere fact that a competitor had them, that was just a detail; if you wanted them, you wanted to get them—was that it?

A. If we could get them legitimately and honestly and lawfully, yes, sir.

Q. Now, Mr. Lausen, isn't this about what happened: You created a card index or card record of every competitor's location, and you issued instructions—

A. Within certain districts, I presume.

Q. Yes—and you issued instructions that they were to be secured by your lease man whether you needed them or not? That is a written record, isn't it?

A. Whether we needed them or not at the time?

Q. It says so in the bulletin, doesn't it?

A. Well, that was never understood that way, whatever it says here. That was not our understanding nor was it ever interpreted that way by our lease managers, or anybody in our organization that had anything at all to do with leasing.

I am not familiar with all the details of this business. I wish I were. I recall that shortly after the commencement of this case my company applied for a bill of particulars.

(Testimony of August F. Lausen)

Q BY MR. GLENSOR: "A. F. Lausen, Jr., being first duly sworn, deposes and says"—and then I will skip some preliminary matter—"that although he is and has been closely in touch, both personally and through subordinate officers and employees of the defendant Foster & Kleiser Company, with the details of the business of the said defendant Foster & Kleiser Company, nevertheless, it is impossible for him in many instances to identify or determine with certainty or particularity the various sites," etc.

You remember making that affidavit, don't you?

A. Yes, sir.

Bulletins 74 and 242 remained in effect until the issuance of the lease manual which I think was put into operation in the latter part of 1924. I am informed that there was no actual cancellation sent out but that the manual superseded all previous instructions. I think those bulletins were definitely cancelled in Bulletin 550-A issued in 1931. For all practical purposes the lease manual superseded all previous instructions that had been issued in relation to leasing. There was an office record card on every competitive location. I don't know how many there were.

Q BY MR. GLENSOR: And it cost a good deal of money to get the cards printed and write them up, didn't it?

MR. CLARK: What is the difference whether it cost a lot of money or not? It is wholly immaterial and irrelevant. We object to it on those grounds.

THE COURT: Overruled.

(Testimony of August F. Lausen)

To which ruling of the Court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 224.

A It would cost us so much a thousand to have the cards printed, five or six dollars a thousand, or whatever it was, I don't know.

(Witness continuing:)

Bulletin No. 524 issued on June 19, 1929, discontinued the use of the blue cards. The G. O. A. decree of June 19, 1929, might have had something to do with that. I don't know. I know that there was an investigation of Foster & Kleiser Company begun by the United States government long before 1931, but I don't think it was as early as 1929. I knew that in 1929 there were rumors that we were subject to an investigation by the United States government. I did not hear about that at the time of the G. O. A. decree. I heard about it when they came in to investigate us.

Bulletins 74 and 242 were superseded by the lease manual in 1924. That was well recognized by everybody in our organization that had anything at all to do with leasing. I have testified that I felt it was necessary for our company to carry about twenty to twenty-five per cent secured unbuilt space. That is to take care of growth and expansion and also loss of locations caused by buildings being erected, changes of ownership and various other means. Those were the only reasons why we carried secured unbuilt space. We never carried it for the purpose of keeping competitors from getting it. We never went

(Testimony of August F. Lausen)

out to buy space for the sole purpose of keeping a competitor off of it. According to Plaintiff's Exhibit 16-YY, in January 1924 we had 893 unbuilt leases in Los Angeles; January 1925, 840; January 1926, 500. LaFon went into business the second time here in Los Angeles in 1926. In 1924 we had 736 unbuilt leases in Los Angeles; in 1928, 1268; in 1929, 1180; in 1930, 1185. We bought LaFon out in 1930. In 1931 we had 800 secured unbuilt leaseholds. The James decree was handed down here in Los Angeles on March 13, 1931. In 1932 we had 176 secured unbuilt leases in Los Angeles. All of those figures represent space that we secured and did not build to take care of natural expansion and normal loss of leases.

I know Walter Stevens who worked for us quite a while here in Los Angeles and in Seattle. He is with us yet in San Francisco. I remember that he came down here and worked in the lease department for a while and then went to Seattle as lease manager. According to Plaintiff's Exhibit 16-YY, in 1924 we had 285 unbuilt leases in the Seattle branch. In 1925, 314. Walter Stevens went to Seattle in 1925. In 1926 we had 437 unbuilt leases in Seattle in 1927, 554; in 1928, 628; in 1929, 539; in 1930, 538, and in 1931, 469. Those figures are all correct.

I think C. E. Stevens Company went into Portland in 1928. According to the Portland branch manager's report in December 1927 it was reported to our San Francisco office that there were prospects of Stevens building a plant in Portland. According to Plaintiff's Exhibit 16-YY we had 221 secured unbuilt leaseholds in 1924 in Portland; in 1925, 255; in 1926, 285; 1927, 376; 1928, 579; 1929, 590; 1930, 619; 1931, 529, and 1932, 300.

(Testimony of August F. Lausen)

I still maintain that we only secured and carried unbuilt space to take care of natural expansion and normal turnover in leases.

Thursday, January 17, 1935

Witness continuing: According to Plaintiff's Exhibit YY, table 7 apparently shows the amount paid by year for unbuilt space as of January of each year. For the year 1929, our obligations in January of 1929 for unbuilt space rental were \$297,409. For 1930 it decreased to \$289,056. It is my testimony that it was necessary to spend that amount of money for unbuilt locations in order to protect the normal growth of our plant and natural turn-over in lost locations. It is my opinion that during the period from 1924 to 1932 it was necessary and reasonable to carry 20 to 25 per cent unbuilt space for the purposes mentioned. According to this table, our built plant rentals over that period increased 24.79 per cent and our unbuilt rentals increased 112.9 per cent. In my opinion that relation of unbuilt to built is natural, normal and necessary for those purposes. On direct examination, I stated in substance in respect to contacting landlords who had leased their property to our competitors that it was our policy to lease for our use all of the advantageous outdoor advertising sites available where traffic was heavy and which would be of value to the advertiser, and that we did not lease locations to keep a competitor from getting them; that from 1917 to 1929 we never had more locations than we needed and that our policy as to competitors's locations was the same as to any other location, to-wit, if the competitor was on the

(Testimony of August F. Lausen)

location and it became available, we endeavored to get it. I also testified that it was our policy to keep contact with competitors' locations but not to try to make the lessor dissatisfied or cause him to oust our competitor from the location. When I say, "If the competitor was on a location and it became available, we endeavored to get it", by becoming available, I mean that if the lease on that location had expired or had lapsed for non-payment of rent or change of ownership or for any reason, then the location was open for bids by us and if we could use that location to advantage, we endeavored to take it if we could get it on our terms. We never tried to take competitors' locations under any unfair circumstances or conditions or any other means.

I do not know anything concerning the lease which my company took on a site belonging to the Special Site Sign Company called the Banchero property on Telegraph Avenue, west side, 50 feet north of 60th Street. I know nothing of the details connected with any of the locations that we have. Nothing in connection with that was ever reported to me.

Q The evidence—and I am going to just summarize the evidence shown by your own records so that there won't be any dispute about it—is substantially this: That the Special Site Sign Company leased the site in 1925 at \$6.00 a year and built a sign of some sort on it; and that your company took a lease on the site at \$50.00 a year in 1927 and then took certain steps to get the Special Site Sign Company to remove their sign off of it, and they did move it off; and it is further in evidence that your company, at least, the records do not

(Testimony of August F. Lausen)

show that they ever built, and I think there has been some testimony given here that they never built any sign on the property, this Banchemo property. Now, that, I take it, according to your testimony as to your leasing policy, was contrary to the policy of your company, wasn't it?

A I don't know. Perhaps. I don't know anything of the details. All I can express to you again, state to you again is what the policy is.

I can't state whether the action as indicated by our office record card was in accordance with our policy or not. I don't know whether what you have stated is correct or whether the card is right or what we have done. We have men that have charge of the responsibility of handling all of our leases and I suppose our counsel will bring those men forward. If that location was available under lapse of lease or any other reason and we had use for it and it was worth the money that we offered for it, our actions in connection with that location were not contrary to our policy. I note that our office record card, Plaintiff's Exhibit 131-B, shows that our officials made an offer of \$18 on January 20, 1927 and that the Special Site Sign Company lease had expired, and that on January 22, 1927 we increased our offer to \$24, and that there is a notation on the card that Special Site Sign Company had a 5-year continuation clause in their lease. Whether or not our actions as shown there were in accordance with our policy depends upon what the condition was at that time, at the end of the first year, the second year or the third year—whether the landlord was in a position to accept an offer from us,

(Testimony of August F. Lausen)

which he evidently was, otherwise we would not have made one. If he was under obligation to the other leaseholder, he was not in a position to accept an offer from us. According to this card, on July 8, 1927, we took a three-year lease on that property at \$50 a year. I presume our records would show whether we ever built a structure on that property or not. I cannot state whether the leasing of that property while the Special Site Sign Company were on it was in accordance with the competitive leasing policy of the company or not. I will admit that we are not infallible and that we make mistakes, but I doubt very much whether anybody would deliberately go out and violate the policy of the company. I can't say that this was done on this property or any other property.

I don't know anything about the Segin property on San Pablo, 75 feet north of 28th. Our office record card on that property shows that we took a lease on that property on October 3, 1928 of ten years at \$6 a year. Assuming your statement to be correct, that the Special Site Sign Company had leased that property in 1925 at \$4 a year and built a sign on it, I should say that the action of our company in taking this lease in 1927 was in accordance with the leasing policy of the company with respect to competitive locations.

I never heard of the Dutra location on Foothill Boulevard.

Q Now, the evidence in this case shows that the Special Site Sign Company had several signs on that location of Dutra from 1918 to 1927; and for the purposes of the question I am going to ask, I will ask you if you will please assume that to be the fact; there has been

(Testimony of August F. Lausen)

nothing to contradict it so far; and on the 28th of September, 1927, your company ground leased that property from one Sequeira, who I think acquired a lease on it from the owner and succeeded Dutra; Dutra had been a former lessee of the property, and then Sequeira got it; and assuming that the company never built on the property and that the entire transaction was cancelled in 1920. Now, would you say that that was or was not in accordance with the leasing policy of your company, the action taken on that Dutra site?

A I should say it was in accordance with the policy of the company.

On an office record card which refers to the property of Ohme & Hanson, 2365 San Pablo Avenue, I see these figures on the card "Form 21-5000-9-27". I guess that is the printer's form. It would indicate that 5000 of them were printed in September, 1927. I note the first entry on that card is dated in June, 1927. I have not the slightest idea how that happened. I see that the first entry on that card is that the site was under lease to Special Site Sign Company for ten years from August, 1926 at \$30 per month for the first five years and \$40 for the second five years. There are also various entries on the card down to March 7, 1930 indicating that our men had made contacts; also an entry on March 27, 1930, "Structure removed. S. S. S. have dropped and cancelled lease. We are not interested in location. Cancel. W. A. H." According to this card, after the Special Site Sign Company had removed their structure we lost interest in the matter. I don't know why, nor do I have any idea why they made all those contacts while Special

(Testimony of August F. Lausen)

Site Company was on that location and then cancelled everything after they got off. I should have to ask the man who made the contacts.

On this card relating to the property of Helen S. Meyer, the entry on September 11, 1930 shows that the Special Site Sign Company's lease was officially cancelled. The phrase on the card, "Change grading to B-3" might have some reference to the grading of our leases. The last entry on that card under date of May 11, 1931 states that changed conditions now make it difficult to build and inadvisable for our use. I don't know why we lost interest in that site.

The card of the property of James Taylor at San Pablo and San Diego shows the property was under lease to Special Site Sign Company at \$20 a year. It also shows that on May 31, 1929 a letter was written to our Sacramento office requesting a contact. That was the usual procedure where the owner happened to live in the territory of one of our other district branches. There is an entry on the card under date of June 30, 1933 that the structures were removed and the card was cancelled. I don't know why we lost interest in that site after Special Site removed its structure.

Q Well, to make this short, you don't know why—there are a number of these cards here that have been read in evidence, that show that as long as the Special Site were on the location, your men made contacts, but as soon as their signs were removed, that card was cancelled. You have no idea what portion of your policy that fitted into, do you?

A I have no knowledge whatsoever about those various locations.

(Testimony of August F. Lausen)

Q Well, in fact, would you say that that was in accordance with any part of your leasing policy with respect to competitive structures?

A All I can say is that I feel confident that all of the actions taken by our men were in accordance with the policy of our company. Of course, we all make mistakes, and I can't vouch that they never made a mistake.

I know the location of Westlake and Dexter in Seattle. I know that there was rather intense competition between ourselves and Stevens over that location. I don't know when we got in competition with them; the details came to me in the latter part of the proceedings there when the competitive situation was becoming rather acute.

Q Well, you had given up the property in June, 1924; in what manner did you still regard it as competitive property?

A Well, that was long after Stevens entered in on the property.

Q Long after?

A Long after; that is my knowledge of the thing.

According to a letter dated December 8, 1928, I was familiar with the fact that we were in competition for that property as early as that date. I had been in Seattle during the period from 1924 to 1928 and I presume I discussed the Westlake and Dexter situation with Mr. O'Neil while I was up there. The last paragraph of that letter reads as follows:

"Regarding your plan of petitioning the City of Seattle Board of Public Works to re-open their bid on the city property at Westlake and Dexter, I agree with Mr. McCord that you should be very certain of your ground, not

(Testimony of August F. Lausen)

alone to see that you have the members of the board pledged to support us, but in view of our Eastern situation, I should like to have you submit everything including a copy of your petition and a copy of Mr. McCord's opinion and advice to us in San Francisco first, before taking any definite step."

Mr. McCord was our Seattle lawyer and the Eastern situation referred to in the letter is the investigation in the East that finally culminated in the Mack decree.

Apparently from this telegram, Plaintiff's Exhibit 59-R, dated February 15, 1930, I knew what was going on there from 1928 down to the date it was cleared. The reason we were bidding on the property and made all these efforts to get it was because we needed it as an advertising site.

Q And you were not doing this solely for the purpose of getting Stevens Company structures off the property, were you?

A No, sir.

I don't remember that we finally made a bid of \$405 a month for that particular site. I remember that our bid was accepted by the Board of Public Works. I don't remember whether we ever built on that site. If I can find or produce any records indicating that we ever paid any rent after Stevens was taken off that property or that we ever built any structures on there, I will produce them. I presume the cause of my letter of December 8, 1928 was to caution the Seattle Branch to know that we were not doing anything in violation of any of our policies or in violation of anything that might come up in this investigation to which we were a party at that time.

(Testimony of August F. Lausen)

Nothing had come up that led me to believe that they even might be doing anything in violation of that policy. When we are in a lawsuit, I guess we have got to take a few more precautions to have legal advice.

Q Mr. Lausen, isn't it a fact that from the issuance of Bulletins 74 and 242, as reiterated in 242, you were making your—your company was making in its various branches a drive on the competitors to get them out of the tight and extra tight districts?

A We were making no such drive. We were trying to secure for ourselves all of the locations that we could possibly secure that we could use in those tight districts.

The branch managers' reports all went to the assistant general manager's desk. Mr. Thompson was my assistant at that time. He discussed with me things that were reported by these branch managers whenever there was any matter that came up that needed discussion. If anything had come up in these branch managers' reports that indicated that the branch manager was doing anything contrary to the leasing policy I don't think he would have called my attention to it. He would have called it to the attention of the branch manager because that was his job. He would not have to take that up with me. To my knowledge, the company was not making any drive for the purpose of excluding our competitors from the tight or extra tight districts or to get their locations. I note the statement in this Seattle branch manager's report for April, 1927 as follows:

“competition is very active on Ranier Boulevard in the vicinity of the Ball Park and McClellan Street. We effected the removal of two illuminated posting panels on the Laurento property at Rainier and Holgate.”

(Testimony of August F. Lausen)

I presume that property was in the tight district. They probably wanted to remove the panels from the Laurento property because they had use for them and in order to get the property for our own purposes.

Q The report goes on: "This is the result of a long siege and was accomplished only after careful and conscientious contact with an owner who feared legal entanglements."

Did you know that your branch managers were making a long siege on competitive locations?

A No, I did not.

Q Would you have considered it within or without your leasing policy on competitive locations if you had known it?

A If he was making a long siege to secure property, simply for the purpose of eliminating competitors without having use for that property, he was violating the rules of our company.

I guess those rules were in writing at that time. I think Bulletins 74 and 242 would cover that. The lease manual superseded 74 and 242 and whatever the policy of the company was, it was conveyed to them through that manual.

I note the statement in the San Diego branch manager's report for June, 1927, "Our sales department has been quite active the past month on Cordtz locations." I don't know that there was any special reason for special activities on the Cordtz locations in June, 1927 other than normal.

(Testimony of August F. Lausen)

Q You were not trying to—you did not want your branch manager to see that Cordtz found notices to move on his doorstep any morning, did you, Mr. Lausen?

A No, sir.

Q And you never told Mr. Cordtz that he might find 50 notices to move, either, did you?

A I absolutely never told him any such thing.

Q Of course not. See if you will follow that after the word "Locations." Maybe this is wrong, and if it is you correct me. "Has secured one lot just north of the Cordtz shop and office building where he has four units. Just secured 12th and Broadway on which he has six units; also two locations on which he has two suburban units on El Cajon Boulevard. The first two mentioned locations are in the tight district. We have also a promise of the location at Fourth and Laurel on which he has two De Luxe structures which will practically eliminate Mr. Cordtz from the extra tight district."

Now, do you know whether or not you had any particular reason in June, 1927, for eliminating Cordtz from the tight district—extra tight district?

A No more reason in June, 1927, than existed at any other time.

Q Of course not. Now, you wanted to eliminate him from the extra tight district all the time, didn't you?

A Not especially, no, sir.

Q Isn't it a fact that you did not want any competitive advertising structures in the tight or extra tight districts?

A The fact is that we wanted all of those locations if we could get them and if we could use them.

(Testimony of August F. Lausen)

Q Whether your comptitors were on them or whether they did not have them?

A Whether anybody was on them.

Q I just want to go on and see if you can't conclude with me that you were making a drive on your competitive locations. Long Beach, October, 1927. The second sentence "Three are old Cordtz paint locations and three are individual locations, of which two are poor." "He is having a hard time getting locations for his panels, and we expect to be able to have him continue to have a hard time." That was a part of your policy, too, at that time, to make your competitors have a hard time, if you could do it, getting locations in the tight and extra tight district, wasn't it, Mr. Lausen?

A I reiterate what our policy was. If we were making them have a hard time, it was just too bad, I guess.

Q Too bad for the competitors, surely. "Naturally, this has affected our rentals some, and no doubt will continue to increase our rentals." Now, you recognize, don't you, that the policy of making the competitor have a hard time caused you to spend a great deal of money on increased rentals, didn't it?

A If you will read all of the things together and not just pick out individual sentences, if you go through all of the reports that we get, you will find that when the competitors comes into the town the first thing that that competitor does is to raise our rents or endeavor to raise our rents and to secure our properties. Now, it is a very easy matter to take out a sentence from these letters and give an impression that this is all we were doing. It is only a very small portion of our business. We had no

(Testimony of August F. Lausen)

endeavor to put a man out of business, but our endeavor was to secure all the locations that we could possibly use and if we could get them legitimately and lawfully, whether we hurt the competitor or not, why, we wanted those locations. You can show me a million of these, Mr. Glensor, and that is all I can say.

The expenditure of that money was not specifically to cause the competitor a hard time.

Cordtz was in business in San Diego for many years before we ever went in there. We bought out the McClintock plant, an established plant, to get in there. That was the franchised plant in San Diego.

Q Now, did Cordtz change his policy, to your knowledge, with respect to competitive leasing after you bought the McClintock plant?

A I don't know what his policy was before we got there.

I can't answer your question as to whether we ordinarily did not carry more unbuilt locations than West Coast in San Francisco, Stevens Company in Seattle, Portland and Tacoma, in San Diego with Cordtz and here with LaFon had in their whole plant built.

Q Now, I want to show you the Los Angeles branch manager's report for October, 1924, and I will take this one. The portion to which I refer is the portion that is marked on the margin in red pencil. "Space rental increased during the month to the amount of \$183.00. There was, however, an increase of \$584.00 in unbuilt space rent. This increase is covered by two locations at El Monte and Pasambra, northeast and northwest, at a rental of \$500.00 and \$900.00 respectively, which were

(Testimony of August F. Lausen)

transferred to this branch from the Restop Realty Company. We also secured eight other leases, for which it was necessary to make a high rental occasioned by the efforts we are concentrating upon our extra tight district. Our policy in this respect has been to segregate from our tight district twelve main arteries, which are now known as our extra tight district. By concentrating on this extra tight district we feel that the tight district as a whole will be greatly benefitted, and by using the money to secure leases on these twelve main arteries which would otherwise have to be expended in securing leases over a large area, we are thus making it increasingly difficult for any opposition to secure a foothold in those parts of the city which would be of importance to them."

Now, were you concentrating on that extra tight district to get advertising locations which you needed in your business or to keep the opposition out?

A Concentrating our efforts to secure those locations to have them for our use.

Q Then, your branch manager's report is all wrong, when he says that "By concentrating on this extra tight district we feel that the tight district as a whole will be greatly benefitted, and by using the money to secure leases on these twelve main arteries which would otherwise have to be expended in securing leases over a larger area, we are thus making it increasingly difficult for any opposition to secure a foothold in those parts of the city which would be of importance to them." Is that wrong?

A It is quite obvious that if we get them, the opposition can't get them.

(Testimony of August F. Lausen)

Q Oh, yes, right. I just want to call your attention to a Portland branch manager's report. May 3, 1927.

"Leasing Department activities are a little above normal due to the steady and consistent drive we are making on the extra tight and competitive locations. Since Mr. Haynes' visit we have quickened our leasing contacts on certain locations, and are pleased to report very satisfactory progress."

Did you know they were making a drive on competitive locations in Portland?

A Not specifically, no, sir.

Q And if they were, was it a part of or was it not a part of your leasing policy with respect to competitive locations in 1927?

A Whatever drive they were making was consistent with our policy.

This statement in the Portland branch manager's report of May 21, 1927 stating that a new bulletin concern known as Pacific Coast System has made its appearance in Salem and stating that the company is making every effort to lease up all desirable locations does not mean that they were leasing those locations to keep this new bulletin concern from getting them. If they leased them we would have use for them; they would not lease them just for the purpose of keeping the new bulletin concern from getting them. They concentrated on Salem business people, as referred to in that bulletin, because we would want the business if we could get it. We had evidently not made any concentrated effort in Salem prior to this new company coming in. It was not a part of the general policy of my company to crush these new competitors in the shell before they ever got a start.

(Testimony of August F. Lausen)

Q I will relieve you of that, Mr. Lausen. This, I think, goes with the other group. Now, after the reports of your branch managers which I have read to you and which you have read yourself, the long siege in Seattle, the drive on the tight district in Portland, the concentrated effort in Salem, the concentrated effort in Los Angeles on the extra tight district, the elimination of Cordtz from the tight and extra tight district in San Diego, do you still say that you were not making a drive on your competitors for the purpose of excluding them from the tight district?

A Yes, sir.

Q What did you mean by your bulletin 242, which you approved, when you said "If we could keep them out of the tight district, we would have little to worry about", or words to that effect?

A The meaning of that was that if we could obtain, under our policy, all of those locations in the tight district, we would have them under our control and would be able to use them, and probably have less worries from the other fellow coming in and making us move—as they always did.

I knew that the stock of the Special Site Sign Company was for sale prior to the time Mr. King and his brother came to my office. Mr. Potter and his attorney called at my office or some place before that. I remember we saw him and I knew about the fact that the stock was for sale. He did not tell me that if we would buy his stock, he could deliver the accounts or locations of the Special Site Sign Company; he made no mention of such fact. I knew Potter very, very slightly. I don't

(Testimony of August F. Lausen)

remember whether he had worked for Foster & Kleiser. I never saw him before that time he called on me. I presume I gave King a check for the stock when he delivered it to me in the Palace Hotel; I don't remember. Our arrangement had been for King to buy the stock and we were to pay King. I did not give King a check of Foster & Kleiser Company for the stock. I think I gave him the checks of Mr. Foster and Mr. Kleiser. I remember testifying on direct examination that we did not want the Special Site Sign Company at that time because King was dealing with a cheaper class of customers and was not in competition with Foster & Kleiser. I can't specify what accounts were on the boards of Special Site Sign Company in 1920. Our company did not buy that stock. King wanted to raise some money. I don't remember what he said he wanted but that was the price he put on his stock; and in the course of the conversation Mr. Kleiser suggested that it might be better all around if King would put his properties in with ours. They did not want to do that and the final arrangement was that Mr. Foster and Mr. Kleiser agreed to advance the money to help King out and as an investment too. King promised to send a statement over and he never did, so we made an audit.

I never knew that the under-cover work or Account A matter was going on in the first phase until the Neales came up to San Francisco to sell out to us. I then told Musaphia that that was contrary to our policies and that they should cease all those activities and never let it happen again. Prior to this written statement, Plaintiff's Exhibit 20-G, Musaphia and Young had gone to San

(Testimony of August F. Lausen)

Francisco and discussed with me the fact that they had reopened this account and operated against LaFon. That was about a month before this statement, Plaintiff's Exhibit 20-G, was made, somewhere around August 28th. I told them to come on back and go to the lawyers and make a complete full statement. I sent Mr. Haynes down to see that it was done. I can't remember who reported back. I know that this report or one similar to it was brought back. I don't know whether it was brought back by Mr. Haynes or Mr. Musaphia or all three of them. Mr. Haynes did come back and reported that he had carried out my instructions and had attended upon the making of this statement at the date this statement was made. Our company's relations with Musaphia were friendly and I know of no reason in the world why he should not have spoken the truth in this report. I have read this statement once. I saw it recently but I have not read it recently. I recall one statement in there which impressed me as not being strictly in accordance with the truth. The statement on page 5 reading as follows: "Mr. Musaphia: I want to say right here that at that time, at the time the De Luxe was taken over, we were instructed by Mr. Lausen and Mr. Kleiser to be very careful about any such operation in the future, as they felt they were very dangerous, and felt that at the time we took the De Luxe over, that those fellows had a good case against our company." is not a true statement of what I had said to him. The statement as a whole is substantially true. I did not tell him that I felt that the Neale Bros. or De Luxe Advertising Company had a good case against our company. I personally, as distinguished from the cor-

(Testimony of August F. Lausen)

poration, learned that this account had been re-opened for operations against LaFon for the first time at the time when they came to San Francisco on August 28th or thereabouts. It was a matter of some surprise to me to find that positive instructions of mine had been disobeyed. I did not make any investigation to ascertain that this account had been re-opened and the under-cover operations resumed. At that time, my assistant, Mr. Thompson, was reviewing the branch managers' reports just the same as any other time.

It was thereupon stipulated that the De Luxe Advertising Company was acquired by Foster & Kleiser Company on October 3, 1924.

Witness continuing: It was very shortly prior to the purchase of the De Luxe that the Neale Brothers came to San Francisco and told me of the alleged unfair operations in the under-cover department. It was probably within a month of the date of purchase. I have no recollection that this statement in the branch manager's report from Los Angeles for September, dated September 22, 1924, "The increases in our establishment expense are represented chiefly by activities in account A." was ever called to my attention by Mr. Thompson. I have no recollection that the statement in the Los Angeles Branch manager's report for October, 1924, "The outstanding feature of establishment expense decrease was that of \$1,576.00 due principally to decreased activities of account A." was called to my attention. None of those reports commenting upon Account A were called to my attention at all. I think the books of our branches were audited once or twice a year, at irregular intervals, by McClaren

(Testimony of August F. Lausen)

& Goode Company. I saw the McClaren & Goode Company audits. I don't remember having seen any items in there as to the amount of money which was spent on Account A.

Foster & Kleiser Company made the contacts and spent the money which they cost solely to keep in touch with all of the properties that we might want to use, and to ascertain when the sites occupied by the competitors would become available so we could lease them.

REDIRECT EXAMINATION

It was thereupon stipulated that the so-called Landis decree was dated July 6, 1916.

BY MR. CLARK:

That statement in Bulletin No. 242, "We should tie up and carry as secured unbuilt only such locations as we can use." was the policy of the company as I understood it at the date of that bulletin. The statement in that bulletin, "It being understood that we must have a reserve under lease to take the place of locations that are lost." was also the policy of the company at the date of that bulletin and it is the policy of the company now. The excerpt from Bulletin No. 242, "Naturally, when we have need of a location, we should endeavor to secure one within our tight district, rather than tying up one outside of it thereby working to the end of having all our structures on the choicest locations" expressed the policy of the company at the date of the bulletin in 1924 and it is our policy now and has been all the time from that time down to and including the present date. It was our policy as stated in the bulletin, "As previously stated, we want to

(Testimony of August F. Lausen)

reduce our secured unbuilt rentals to the minimum and not spend money on locations unless we have or are going to have use for them in the immediate future.” As I understood Bulletin No. 74 and Bulletin 242 when they were promulgated, it was not the intention of the company to take properties of any kind whether it could use it or not at any time whatsoever. Our policy was to secure for our use all of those properties that might become available that we had use for at that particular time or at some time in the near future. The concluding sentence in Bulletin No. 242, “Our policy should be to have the best leases in our possession that can possibly be secured, leases that cover locations that we can use and develop to give the maximum advertising value, expending the smallest amount of money that we can in order to accomplish it.” was the policy of the company as I understood it at that time and has been the policy throughout.

With reference to the Dutra location concerning which I was asked on cross-examination, if, at the time the lessor of the Special Site Sign Company was a tenant of the owner, that the tenant's rights expired and the owner, through his authorized agent, put that tenant off and then authorized a new tenant to make a lease with Foster & Kleiser Company and Foster & Kleiser Company took it, that was in conformity with the policy of the company as I understood it, whether we needed the property or not at that time.

Q Did you always have need for property at some reasonable time in the future?

A Well, within those locations where we were short of space.

(Testimony of August F. Lausen)

When Stevens was attempting to secure locations in Seattle, those attempts quickened the competition for locations for outdoor advertising purposes. The competition of Stevens for locations in Seattle greatly increased the rate of rental paid for outdoor advertising locations. I was acquainted with the fact that Stevens himself boasted that his activities in Seattle had increased the rentals paid on properties for outdoor advertising purposes to the citizens of Seattle by \$100,000 a year. When Stevens, LaFon, Special Site or any other competitor is in competition with Foster & Kleiser Company for any particular location it results in an increased number of contacts generally for that location and the price for the location goes up.

From 1915, when Foster & Kleiser Company, came into California, down to March 31, 1928, there was a continuous increase in the dollar volume of business that we did. Subsequent to March 31, 1928, there was a downward trend, the worst period of which was the fiscal year ending March 31, 1933, when the dollar volume of our business began to go down perceptibly. We tried to unload a number of our leases. We began first with unbuilt space because that was the easiest to unload. There were no structures on it and this influenced our decision to begin with the unbuilt leases first because there was no expense of removing the structures. We had to get rid of the space and we had to save money, and our next step was to try to cancel a number of the leases on which we had structures which were the least desirable. We cancelled a very considerable number of them. During the time that the dollar volume business of Foster & Kleiser Company was

(Testimony of August F. Lausen)

on the increase, there was an increasing need for built space and our need for unbuilt space increased with the proportion that we increased our plant.

An exclusive solicitor is a man who devotes his time exclusively to the sale of the outdoor advertising medium. In other words, he is engaged in the business of selling outdoor advertising exclusive of other media of advertising. Subsequent to July 6, 1916, the date of the Landis decree, Foster & Kleiser Company had one of these national solicitorships from the Poster Advertising Association. That solicitorship which we had at that time was not exclusive in the sense that nobody else in California or no other corporation could get one.

There was another national solicitor in California subsequent to the date of the Landis decree and prior to the formation of the G. O. A. in 1925. It was the Poster Advertising Company. This so-called national solicitorship was really a recognition by the Poster Advertising Association of Foster & Kleiser's fitness and ability to represent the outdoor medium in the sale of it to advertisers located here on the Pacific Coast. We did not pay anything for that recognition. The solicitorship brought us all the information that the Association gathered, especially with regard to rates and data concerning outdoor advertising plants throughout the United States. Prior to the date of the Landis decree, we paid the Association a thousand dollars a year for the solicitorship. We did not pay anything after the Landis decree.

Q Did Foster & Kleiser Company in its capacity as a so-called national solicitor, or exclusive solicitor, as it was referred to yesterday afternoon, have any agreement

(Testimony of August F. Lausen)

or understanding, express or implied, with anybody, any plant owner or with any other national solicitor that it would place on the boards of Association plants only the business or any part of it that Foster & Kleiser Company created through its national solicitorship?

A We had no agreement.

Q Well, did Foster & Kleiser Company in any capacity have any such agreement?

A No, sir.

I do not know what a monopoly is. In building up this business it was our intention and desire to create a business which would enable us to secure contracts for our plants in the greatest volume that we possibly could. We wanted to get all of the outdoor advertising business that we could by fair means. Our desire and intention in leasing large numbers of outdoor advertising locations during that entire period was to be able to utilize them in the conduct of our business and to enable us to place the displays of the advertisers on the locations which we secured. It was not the intention of Foster & Kleiser Company, either primarily or at all, to prevent competitors from coming into the field or to curb competitors after they came into the field or anything of that kind. It seems self-evident that at times when we got a lease that prevented competitors from getting a lease on the same property and when we got business to display on the outdoor advertising plant that prevented our competitor from getting it. Referring to the testimony concerning national business that came to Foster & Kleiser Company because of the effect or influence that the franchise in the Poster Association had, it is my opinion that the fundamental re-

(Testimony of August F. Lausen)

quisite to the success of an outdoor advertising plant or any other business is to create a feeling of confidence in the minds of the advertisers with whom we are dealing. The Outdoor Advertising Association and the Poster Advertising Association had a great deal to do with creating the confidence of which I speak by bringing about a standardization in the medium and collecting all the promotional matter so that all these things could be placed before the advertiser who was at the point of using the medium. Our medium is entirely different from other media in that it is not entirely in evidence before the advertiser; it is all outdoors, which covers a wide area. If an advertiser buys a page in a magazine such as the Saturday Evening Post, that page is laid before him and he knows what he is getting. He knows that there are two million copies distributed and this is guaranteed to him. He does not see that in the outdoor advertising. We cannot bring the panels before him and he has got to be assured when he makes a purchase that he is going to get what he pays for.

A single facing panel is one outdoor advertising panel that faces in one direction, as distinguished from a string of panels facing in the same direction. Foster & Kleiser adopted the single facing panel and began to work towards that end after we had taken over the Varney plant. When we took that over, they had long strings of boards adjoining and built on the ground. There were no separations by moldings or anything of that sort; it was one long fence on which the paper was posted. In the reconstruction of this plant we took down one-third of it and we had to replace a considerable portion of that in other locations. That increased our need for outdoor advertis-

(Testimony of August F. Lausen)

ing locations because after we abandoned a third or any portion of them, we had to get new locations to re-locate the same footage. When we re-located this footage we had to secure additional unbuilt space because at that particular time we determined upon a new course in the plan of construction. The old method was to use practically every foot that was on a particular lot. If the location was on a corner, the old way was to build on the main thoroughfare facing it and then along the side street, building every foot that we possibly could. If the lot were 100 feet on one street and 100 feet on the cross street, we built 200 feet. The first step in the improvement was to take down those 200 feet and place four panels across the corner, angling to the traffic. It is obvious that if we took down 200 feet and replaced 100 feet that we had to go out and get another location that would accommodate another 100 feet of posting in order to maintain the capacity of the plant. That trend towards a single facing panel has increased as the years went by. A few years before this they brought an engineer into our company and it was his duty to supervise the construction of all these plants. He laid out a plan or course of procedure and each year we tried to cut down the number of panels that showed in one direction; for example, if we had four panels showing in one direction we cut it down to three panels and every time we did that it increased our need for space. It is my recollection that at one time there was a count made and we had an average of 45 panels facing in one direction. I think we have now an average of about one and one-half panels facing in the same direction. That goes to all of our plants on the Coast.

(Testimony of August F. Lausen)

If we have poster panels located upon a given piece of property, say, a corner lot, and we have acquired the property adjoining on each side of that lot and we have no panels on that adjoining property, that adjoining property is classified in our monthly reports as unbuilt space. We have to have leases on that adjoining property to protect the built panels in order to increase the value of the location and its visibility. The usual practice is that if we have a corner lot and also the lot adjoining the corner lot to build the panels on the lot adjoining the corner lot and hold the lots on the corner so as to give a greater value to the structure which is built on the adjoining lot.

Q BY MR. CLARK: Now, that matter that Mr. Glensor read to you—you were reading from paragraph 28 in that questionnaire—"What is meant by franchises, leaseholds, and national solicitorships?" The first paragraph reads: "While this is an intangible value, it is at the same time the very crux of the business and its most valuable asset, as it represents definitely that which has been built up over a long period of years at great expense and without which the company cannot operate." Now, if you want I will let you read that yourself and then I will ask you what that means.

A Well, that means good will.

Q Do you know any way of attributing, by rule or any other way, attributing a value to an outdoor advertising lease—excepting ground leases for a term of years when you have the property under lease for all purposes including outdoor advertising purposes?

A There is not any measuring stick to the value of a location.

(Testimony of August F. Lausen)

Q Any individual location?

A Any individual location—the value, to be used for outdoor advertising.

Mr. Clark explained to the court that he was developing from the witness the theory that after all, franchises and leaseholds, in the outdoor advertising business, mean simply goodwill, and that the solicitorship also had a goodwill value.

Q The third paragraph reads: "The term leaseholds refers to nearly 15,000 written leases into which the company has entered with property owners in three states, covering carefully selected locations for its displays. Both the cost of obtaining these leases, which involves the operation of a separate department of the business employing many men for this specific purpose, and the rental cost of such location, are written into annual expense and not set up in plant value. Through the exclusive control of these leaseholds and its franchises the company is enabled to handle and control over 90 per cent of the outdoor advertising on the Pacific Coast". You remember that language that was read to you yesterday?

A Yes, sir.

Q Now, will you answer this question, please: In a going concern, such as Foster & Kleiser Company, is the large number of leases which Foster & Kleiser Company has up and down the Coast an element of goodwill, business goodwill?

A Yes, sir.

Q Do you know of any other way to value it?

A No

(Testimony of August F. Lausen)

MR. CLARK: I am speaking now of outdoor advertising alone, other than ground leases for a definite, fixed period of time, generally a long time, giving you the full right to the property.

I think that is all.

RECROSS EXAMINATION

BY MR. GLENSOR:

From March 31, 1928 the trend in the dollar volume of our business has been down right along every year. There has been a slight increase this past year. The lowest point in losses was March 31, 1933.

During that downward trend we had more unbuilt space than we wanted but we made no concerted attempt to cut it down until the latter part of 1931. It was along in that period that we started to unload unbuilt space, trying to save money, and then we tried to cancel leases. I don't think that we ever ceased our contacts on competitors' locations so far as the extra tight districts were concerned.

On direct examination I stated that during the upward trend of the business from 1916 to 1928 our unbuilt space increased in proportion to the increase in built space.

Q. Well, do you recall that I called your attention to the fact this morning that your built space had increased 24 per cent—I will leave off the fractional proceedings—and your unbuilt had increased 112 per cent; do you remember that?

A I remember those figures, yes, sir.

Q But you still think that the unbuilt ought to increase in proportion to the built, is that right? Is that right?

A Yes, sir.

(Testimony of August F. Lausen)

I also stated that the fundamental requisite of success in the outdoor advertising business is to create a feeling of confidence in the minds of the people with whom the outdoor advertiser is dealing. I should say that anything that undermines that confidence tends to discredit the outdoor advertiser with the business man and causes him to not make a success.

Q And then if Mr. Thompson is right in his statement made in the bulletin that I read to you yesterday, 523-A, that the constant moving of locations, or as he stated it, "even if the advertiser gets an erroneous idea that a location has been moved, it disturbs him, and if it happens two or three times it tends to make him lose confidence"—that condition would be a great curb on the success of an outdoor advertiser, if Mr. Thompson was right, wouldn't it?

A Constant movement or loss of locations would probably disturb the advertiser's mind.

I testified that the statement to the effect that the leaseholds, national solicitorships and franchises were the very crux of the business meant, in substance, good-will.

Q Now, in 1920, I think you capitalized those at an even \$3,000,000, increasing in 1923 to \$3,400,000; if my figures are wrong, don't pay any attention to it, but it increased some, anyway. And you have continued to capitalize franchises and leaseholds down to 1932, according to this extract from Moody's Manual that I showed you yesterday; I will hand it to you right now; I have another one.

(Testimony of August F. Lausen)

Now, in 1932 you capitalized—wait a minute—in 1931 you capitalized your franchises and leaseholds at \$6,198,934.00 even. Do you see that figure? It is the fourth?

A Yes, sir; I got it.

Q The next year, in 1933, you capitalized leaseholds only at \$6,198,934.00, the same figure, even money. Do you see that?

A Yes.

Q And the next year you added “good will” to that; you said leaseholds and good will \$6,198,935.00,” one dollar more. Do you see that?

A Yes, sir.

Q So, the good will amounted to exactly one dollar, is that right?

A Well, according to this typing here, you have leaseholds in 1932, and then the next year you have “leaseholds and good will.”

Q Yes.

A And there is one dollar’s difference.

Q Right. And the next year, ’34, it is the same “leaseholds and good will \$6,198,935.00”?

A Yes, sir.

REDIRECT EXAMINATION

BY MR. CLARK:

Mr. Glensor in his recross examination referred to an increase in unbuilt rentals of 112 per cent from 1924 to 1932 inclusive and an increase of 24 per cent in the plant. Those were not the figures I had in mind when I testified that unbuilt space increased in proportion to the increase in built space.

(Testimony of Frank T. Hopkins)

Thereupon

FRANK T. HOPKINS

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I am president and general manager of the National Outdoor Advertising Bureau, Incorporated. I have been associated with that concern since the fall of 1918. I myself have no business connection with Foster & Kleiser Company whatever, other than the sending of orders to them in the natural course of the business. I do not own any stock in Foster & Kleiser Company.

MR. GLENSOR: There was no necessity for you to qualify the witness as an expert. Ask him any question you want about the outdoor advertising business.

The Bureau was organized some time prior to the time that I came with it in 1918. It was organized by advertising agencies, what we term "general agencies." Those are the organizations that handle all kinds of advertising. They are not devoted exclusively to outdoor advertising. It was organized for the purpose, primarily, of securing recognition in the outdoor advertising field by agencies, was owned entirely by agencies whom we have generally terms "members of the Bureau", and it operated for them as their contact with the field of outdoor advertising for the promotion of the medium of outdoor advertising, or cooperating with them in the competitive selling of outdoor advertising and in the actual placing, handling and servicing of the business when we got orders to place.

(Testimony of Frank T. Hopkins)

The Bureau has never owned any plants nor do they have any interest of any kind in plants. We have approximately 200 members, none of which devote themselves exclusively to outdoor advertising. All of our member agencies handle all kinds of advertising. The Bureau handles only the standard forms of outdoor advertising.

We render the following service to our members: We promote the use of outdoor advertising with these members; we help them in the presentation of their plants; we make the estimates; we furnish the information that is necessary for the consideration of the medium; and when and if we get orders, we help to handle those orders, sublet them to plant owners all over the country and follow through on all of the elements of service, pay the bills to the plant owners, give shipping instructions to the lithographers for the shipment of paper, and check and inspect and do everything that goes into the servicing of an outdoor advertising account, and then collect the bills from the agencies.

The selection of plants on which outdoor advertising is to be done by one of our members is made by the agency or the advertiser or some representative of one or the other. We make no distinction whatsoever in handling or listing the plants of the so-called Association members and the so-called independent plants.

Q Have you any agreement with any person, Foster & Kleiser Company, or the General Outdoor Advertising Company, or any advertising company for the placing of business on that plant?

A We have no such agreement with anyone.

(Testimony of Frank T. Hopkins)

From the earliest days of outdoor advertising there was a school of thought in the business that leaned very definitely toward the idea that outdoor advertising should be sold entirely by exclusive solicitors as opposed to the general agencies. For a considerable period of time practically all national business was produced through the exclusive solicitors. Later on, general agencies became more important in the general field of advertising; and the agencies began to cast about for ways and means of securing recognition, as it was termed, in the field of outdoor advertising. One of the steps in that direction was the formation of what we call in the business the Bureau, National Outdoor Advertising Bureau.

The associations established the standard of practice and brought together the plant operators from all over the country. The associations were largely instrumental in getting owners to build plants in towns where there were no plants, especially the smaller towns. In fact it did about all of the things that made it possible to sell outdoor advertising as a national medium. The difficulty of selling outdoor advertising as a national medium at that time was principally a lack of standardization and a lack of any uniformity. Until the standardization took place, posting was sold in all kinds of sized units indiscriminately. Paint was sold pretty much the same way. This lack of uniformity made it almost impossible to sell the outdoor advertising medium as a medium of national advertising. Most of the outdoor advertising sold nationally in the early days was sold as paint, and that, to a large extent, was executed by the one company which would take the order.

(Testimony of Frank T. Hopkins)

The association itself has never sold any business in the sense of taking a contract and subletting it to plant owners.

Foster & Kleiser Company never refused to take any business from us. They were always quite ready to take business from anybody, either agencies or others.

After I went with the Bureau it finally arranged for an outlet for its outdoor business. It seemed that the Bureau should have some rather definite arrangement with some of the big operators in the field and when that failed after a long period of negotiations, the Bureau made an arrangement with the Thomas Cusack Company which allowed the Bureau to clear its business through the Cusack Company to the plant operators. That contract was made in 1918 and from then on until the formation of the General Outdoor Advertising Company in 1925, the greatest percentage of the business of the Bureau was cleared through the Cusack Company. We had some little business at all times that was placed direct with plant operators. The Thomas Cusack Company had plants scattered throughout all the large cities in the Eastern section of the United States.

It was thereupon stipulated by counsel for all parties that for convenience the Poster Advertising Association would be referred to as the "Poster Association" and the Outdoor Advertising Association as the "Paint Association", and the Poster Advertising Company as the "Selling Company".

Witness continuing: The Poster Advertising Company was a selling company primarily, selling posters.

(Testimony of Frank T. Hopkins)

The Bureau had many contracts which required posting in the Pacific Coast area where the Cusack Company did not have any plants. In such places where the Cusack Company had no plant of its own, the advertiser or the agency always had the privilege of designating the plants upon which the advertising was to be posted if there were competitive plants, or two or more plants in the same city.

The General Outdoor Advertising Company was formed in 1925, being a combination of the Thomas Cusack Company and another group of companies commonly known as the Fulton group, including the Poster Advertising Company. G. O. A. took over and assumed the assets of both groups.

After the G. O. A. was formed, the contract between the Cusack Company and the Bureau were taken over by the G. O. A. and rewritten. This printed copy marked Plaintiff's Exhibit 221 for Identification is a correct copy of that contract as rewritten.

BY MR. GLENSOR:

That is the only contract there ever was between the Bureau and the G. O. A. and is the one that was attached to the complaint in the case of United States v. General Outdoor Advertising Company and the Bureau and which was cancelled by consent in the decree.

The contract referred to by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 221 in evidence, and is in words and figures as follows, to-wit:

[PLAINTIFF'S EXHIBIT No. 221.]

MEMORANDUM OF AGREEMENT BETWEEN

National Outdoor Advertising Bureau, Inc.

and

General Outdoor Advertising Co., Inc.

National Outdoor Advertising Bureau, Inc.

F. T. HOPKINS, General Manager

H. F. GILHOFER, Western Manager

THIS CONTRACT, made this 24th day of August, 1925, by and between GENERAL OUTDOOR ADVERTISING CO., INC., a New Jersey corporation (hereinafter called "the Company") party of the first part, and NATIONAL OUTDOOR ADVERTISING BUREAU, INC., a New York corporation (hereinafter called "the Bureau"), party of the second part:

WITNESSETH:

That for and in consideration of the mutual covenants hereinafter contained and of the sum of One Dollar and other good and valuable considerations, by each of the parties to the other paid, receipt whereof is hereby acknowledged, the parties hereto do agree with each other as follows:

I. The Company hereby authorizes the Bureau, upon the terms and subject to the limitations hereinafter expressed, to solicit contracts for outdoor advertising to be executed upon outdoor advertising plants owned and/or operated by the Company, and, at the option of the Bureau, to solicit such contracts to be executed

upon such plants not owned and/or operated by the Company. For the purpose aforesaid, but for no other purpose, and subject always to the terms and limitations expressed in this contract, the Bureau shall be deemed to and shall be the agent of the Company.

II. The Company shall forthwith furnish to the Bureau a complete memorandum of the standard or card rates applicable to that portion of the display advertising plants and bulletins owned and/or operated by the Company with respect to which standard or card rates have been established. If the Company shall at any time make any change and/or changes in the said standard or card rates, the Company shall notify the Bureau of such change and/or changes at least thirty days prior to the date upon which the same shall become effective and not later than the Company shall give notice thereof to any soliciting unit other than the Bureau, including its own direct sales organization.

The Company shall also from time to time furnish to the Bureau full information regarding the painted and electric display bulletins owned and/or operated by the Company with respect to which no standard or card rates shall have been established and of all special rates or terms upon which such bulletins may be offered to advertisers, and shall furnish to the Bureau copies of all bulletins of rate space and service information prepared by the Company for the use of its own direct sales organization and/or any other soliciting unit.

The Company shall also from time to time furnish to the Bureau full information at the time possessed by the Company regarding outdoor advertising plants other than those owned and/or operated by the Company, and in

all its transactions with any such plant and/or plants with respect to the Bureau business, the Company shall observe the same care and endeavor to obtain the same service as in connection with business developed by its own direct sales organization.

It is the intention and purpose of this article of this contract that the Bureau shall at all times have available to it for the purposes of its solicitation under this contract, full, accurate and current information regarding the outdoor advertising plants owned and/or operated by the Company and of the terms, both standard and special, if any, which at the time may be offered to advertisers, and that the position of the Bureau in this respect shall be fully as favorable as that of the Company's own direct sales organization; further, that the Company shall cooperate in every way with the Bureau in its effort to secure full recognition as a solicitor from all the owners of outdoor advertising plants and/or the Poster Advertising Association to the end that the Bureau may secure from all currently standard commissions, terms and facilities.

All contracts procured by the Bureau to be carried out upon plants owned and/or operated by the Company shall be at rates established by the Company, whether standard or special, and no allowance, rebate, adjustment, concession, cut-rate and/or free service and/or other terms, the effect of which would be to reduce and/or modify such rates, shall be made and/or allowed by the Bureau and/or by the advertising agency or person connected and/or affiliated therewith. Similarly, all contracts obtained by the Company by direct solicitation shall be at the Company's current rates, standard or special, and no allow-

ance, rebate, adjustment, concession, cut-rate and/or free service and/or other terms the effect of which would be to reduce and/or modify such rates, shall be made or allowed by the Company. The Company shall also use its best endeavors to see that the aforesaid practice is followed by all solicitors of outdoor advertising with respect to all contracts to be performed upon plants owned and/or operated by the Company.

III. All advertising contracts procured and/or obtained by the Bureau shall be subject to the written acceptance thereof by the Company, signed by an officer of the Company duly authorized. The action and policy of the Company with respect to acceptance of all such contracts shall be in accordance with the general policies of the Company at the time in force and in respect thereof the Company shall accord to the Bureau as great a degree of consideration and as favorable treatment as the Company shall accord to any other soliciting unit, including the Company's own sales force engaged in direct solicitation.

IV. Any and all advertising contracts, procured and/or obtained by the Bureau to be performed by the Company, shall forthwith be assigned by the Bureau to the Company.

V. The Company shall pay to the Bureau in full of all compensation and expenses of the Bureau a commission of twelve per cent (12%) computed upon all amounts actually paid by advertisers under contracts for outdoor advertising procured and/or obtained by the Bureau for the Company and accepted by, and assigned to the Company as hereinbefore provided (including all contracts to be carried out either in whole or in part upon advertising

plants other than those owned and/or operated by the Company), and in respect of which the Company shall receive payment.

In practice, the Company shall currently render invoices for service performed by the Company under contracts obtained by the Bureau upon a special form or forms similar to those now in use and which shall appropriately display the name of the Company and the Bureau. All such invoices shall be rendered to the Agencies respectively through whom the contracts respectively shall have been obtained, and duplicates thereof shall be furnished to the Bureau. Such Agencies shall in remitting deduct the amount of the commission, not exceeding twelve per cent. (12%), which may be payable to them under arrangements currently existing between them and the Bureau, of which the Company shall have had previous written notice, and shall pay the amount of the invoice, less such deduction, to the Company. On the first day of each month during the term of this contract, the Company shall render to the Bureau a true and correct report of the amount of the invoices with respect to which the Company shall have received payment as aforesaid to the twentieth day of the preceding calendar month and not theretofore returned to the Bureau, and therewith the Company shall pay to the Bureau an amount equivalent to the difference between twelve per cent. (12%) of the aggregate face amount of such invoices and the aggregate of the amounts in respect thereof returned by the agencies as aforesaid.

By way of explanation of the foregoing, the amount which would be retained by an Agency under the foregoing provisions and under arrangements presently ex-

isting between the Agencies and Bureau would be ten per cent. (10%) of the face amount of the invoice, and the amount payable to the Bureau by the Company would be two per cent. (2%) thereof.

The Bureau shall aid and assist the Company, in so far as may be practicable, in the collection of accounts due from advertisers and/or Agencies under any and all contracts aforesaid.

VI. So long as the accounts of the advertisers whose names are set forth upon a schedule thereof hereto annexed marked Exhibit A and by reference made a part hereof, are active in outdoor advertising and are upon the books of the Bureau and/or an advertising Agency which at the time shall be affiliated and/or connected with the Bureau, the Company shall refrain from any solicitation of the said advertisers. Excepting as may be hereafter otherwise agreed on in writing by the parties hereto, the Company shall have the right to solicit contracts for outdoor advertising from any of the said advertisers if and so long as the account and/or accounts thereof shall not be upon the books of the Bureau and/or any affiliated or connected Agency, and/or if such account and/or accounts, though remaining on the books of the Bureau and/or any affiliated or connected Agency, shall become inactive in outdoor advertising.

So long as the accounts of the advertisers shown upon a schedule thereof hereto annexed marked Exhibit B and by reference made a part hereof, are upon the books of the Company and are active in outdoor advertising, the Bureau shall have no authority to solicit contracts for outdoor advertising from the said advertisers, and the Bureau and its affiliated and connected agencies shall

refrain from solicitation thereof. The Bureau, however, shall have the right to solicit contracts for outdoor advertising from any of the said advertisers if and so long as the account and/or accounts thereof shall not be upon the books of the Company and/or if such account and/or accounts, though remaining on the books of the Company, shall become inactive in outdoor advertising.

Seasonal or periodical accounts shall not be deemed inactive during the normal period of their suspension.

Accounts acquired hereafter by the Bureau or the Company shall be automatically added respectively to Exhibits A and B, and thereupon shall become subject to the pertinent provisions of this article of this contract.

All accounts at the time not included among the accounts currently listed in Exhibits A and B shall be open to solicitation by either the Company or the Bureau, excepting as may be otherwise hereafter agreed upon in writing.

VII. The Company shall forthwith in aid of the sales effort of the Bureau, establish an adequate department composed of capable and experienced representatives who shall cooperate with the Bureau and/or its affiliated Agencies in securing and servicing outdoor advertising accounts through the Bureau and/or its affiliated Agencies only. Excepting as may be otherwise agreed from time to time, the Company, however, shall not be obligated to furnish the services of any person in the department aforesaid for actual participation in negotiations with advertisers whose accounts are at the time the subject of active competitive solicitation by the Bureau and the Company.

The Company at all times shall use all diligence in executing all contracts procured by the Bureau and accepted by the Company, and in performing all such contracts the Company shall in all branches of its service, excepting those having to do with the creation and development of design, copy, and ideas for the merchandising of the advertiser's product, assist and cooperate with the Bureau fully and as fully as with any other solicitor of contracts for outdoor advertising, including the Company's own sales force. The Bureau and its affiliated and connected Agencies shall use and employ its and their best endeavors in the development and extension of the use of the outdoor medium and in the solicitation of contracts to be performed upon the plants and bulletins of the Company.

The Bureau shall at all times during the term of this contract apply a reasonable portion of its total revenues to the employment of competent salesmen soliciting outdoor advertising.

VIII. Each contract for outdoor advertising tendered by the Bureau to the Company shall be plainly marked or stamped with the name of the Agency affiliated or connected with the Bureau by which the contract shall have been procured. If any such Agency shall perform any act which, if done by the Bureau, would be a breach of this contract, or omit to do any act which, if omitted by the Bureau, would be a breach of this contract, and shall fail to make good such default after reasonable written notice thereof to the Agency and to the Bureau, the Company shall have the right to refuse to pay any commissions with respect to contracts for outdoor advertising thereafter procured by such agency, for such time as the

Company, in its sole discretion, may determine, but neither the Bureau nor its affiliated or connected Agencies other than the Agency in default shall be under any liability with respect to such a default.

All contracts made by the Company with plant owners other than the Company with respect to the execution of outdoor advertising service required under any contract procured by the Bureau and not to be performed on the outdoor advertising plants owned and/or operated by the Company shall be stamped or marked with the name of the Bureau.

IX. The term "outdoor advertising" shall be construed to include poster advertising, painted display advertising, electrical display advertising, and any and all other forms of advertising now or hereafter developed and/or engaged in by the Company.

X. Anything hereinbefore contained apparently to the contrary notwithstanding, no commissions shall be payable by the Company to the Bureau with respect to "local business" under contracts and/or renewals hereafter obtained, excepting the "local business" accounts shown upon Exhibit A with respect to which commissions shall be paid at the rate and in the manner provided by paragraph V of this contract.

The term "local business" shall be construed to mean all contracts for outdoor advertising for account of any person operating a retail merchandising business within the city, town or village in which the contract is to be performed.

XI. The Company recognizes that the cost of the service to be rendered by the Bureau, as contemplated by

this contract, will exceed the cost of the service commonly performed in connection with outdoor advertising by a general advertising agency. To avoid discrimination against the Bureau and in favor of any general advertising agency, the Company shall pay to any such general advertising agency commissions upon business produced at not more than the maximum rate of ten per cent. (10%).

XII. This contract shall continue and be in full force for a minimum period of five years from the date hereof, which period shall be automatically extended by an additional year for each year of operation hereafter under it or it as so extended, until notice in writing be given by either party to the other of its desire to terminate the same. Following the giving of such notice the period of this contract shall continue to and terminate at five years from the end of the year of the contract in which such notice be given. Any such notice shall be in writing, subscribed by the party giving the same, enclosed in a customary envelope or wrapper, addressed to the Company at its then executive office in the City of New York, and to the Bureau at its then executive office in the City of New York, and shall be complete from the time of deposit thereof as aforesaid, postage prepaid, in any United States post-office, official mail box and/or official mail chute.

Upon the expiration or sooner termination of this contract, all current contracts for outdoor advertising theretofore assigned by the Bureau to the Company shall be forthwith reassigned to the Bureau.

XIII. The parties shall cause the contract between Thomas Cusack Company and the Bureau, dated November 19, 1918, to be cancelled as of the date of this contract.

XIV. This contract shall extend and apply to the Company and to all and singular the corporations controlled and/or operated by the Company.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized.

GENERAL OUTDOOR ADVERTISING CO., INC.

By Kerwin H. Fulton (signed)
PRESIDENT

Attest:

Geo L. Johnson (signed)

NATIONAL OUTDOOR ADVERTISING
BUREAU, INC.

By Geo. C. Sherman (signed)
PRESIDENT

Attest:

F. T. Hopkins (signed)

EXHIBIT "A"

BUREAU ACCOUNTS

Akron Baking Co.
A. C. Spark Plug Co.
Alcone Knitting Co.
American Bank & Trust Co., New Orleans, La.
American Chain Co.
American Biscuit Co.
American Hosiery Co.
American Lead Pencil Co.
Anderson Spring Lubricator Co.
Anglo California Trust Co., San Francisco, Calif.
Arcadia Cafe, Philadelphia
Art Lamp Mfg. Co.
Aspegren & Co.
Associated Oil Co.
Aquazone Corp.
Atlas Brewing Co.
Atmore & Son, Inc.
Atwater Kent Mfg. Co.
Aunt Jemima Mills Co.
Austin Nichols & Co.
Axton Fisher Tobacco Co.
Arrowhead Springs Corp.
Aines Farm Dairy Co., Kansas City
B. V. D. Corp.
Ballard & Ballard
Bauerlein, Inc.
Bayuk Cigars, Inc.
Beich, Paul F.
Bellingham Coal Mines

Bendix Brake Co.
Benzo Gas Motor Fuel Co.
Bernet Kraft & Kaufmann Milling Co.
Best Clymer Co.
Biflex Corp.
Bird & Son
Bishop & Co., Los Angeles, Cal.
Blanchard-Rowe & Co., Chicago, Ill.
Blanke Wenneker Candy Co.
Blauer-Goldstone Co.
Boardman & Son, Wm., Co.
Boyle Valve Co.
Bonar Phelps
Boncilla
Bonita Co.
Borden Co.
Bowman Dairy Co., Chicago, Ill.
Brandenstein, M. J., Co.
Brevoort Hotel, Chicago
Breyer Ice Cream Co.
British Columbia Shingles, Ltd.
Bronx Baths
Brooks Tomato Products Co.
Buffalo Rock Co.
Buick Motor Co. (Including dealer accounts)
Bulletin (San Francisco)
Bunte Bros. Candy Co.
Burlington Overall Mfg. Co.
By Products Coke Corp.
Cadillac Motor Co. (Including dealer accounts)
California Conserving Co.
California Packing Corp.

California Fruit Growers Exchange
California Walnut Growers Assn.
Calumet Baking Powder Co.
Calumet Gas & Electric Co.
Campbell Ewald Co.
Canepa, John B., Co.
Chicago & Eastern Ill. R. R.
Chapin-Sacks Corp.
Chase Candy Co.
Chero-Cola Co.
Coca Cola Co. (Posting only)
Cherokee Fuel Co.
Chevrolet Motor Co. (Including dealer accounts)
Chicago By Products Coke Co.
Chicago Flexible Shaft Co.
Chrysler Motor Car Co. (Including dealer accounts)
Chicago, Milwaukee & St. Paul R. R.
Chicago Motor Club
Chicago Wilmington & Franklin Coal Co.
Cities Service Oil Co.
Citrus Soap Co. of California
City Baking Co., Baltimore
Cleveland Metal Products Co.
Cluett Peabody Co.
Cochran & McCluer Co., Chicago, Ill.
Columbia Tire Corp., Portland, Ore.
Congoleum-Nairn, Inc.
Consolidated Wafer Co.
Continental Oil Co.
Corby Baking Co.
Cosby, W. M. (Flour)
Crescent Mfg. Co.

Cressman's, Allen R., Sons
Crew Levick Co.
Cuyamel Fruit Co., New Orleans
Fruit Dispatch Co., New Orleans
Standard Fruit & Steamship Co.
Curtiss Candy Co.
Cushman Sons, Inc.
D'Arcy Advertising Co.
Davidson Investment Co., Los Angeles, Cal.
Davis Co.
Decker, Jacob E., & Sons
Denver Dry Goods Co.
Denver Park & Amusement Co.
DeWitt Bros.
Dodge Bros. (Including dealer accounts)
Eagle Wabash Corp.
Early & Daniels Co.
Easton, Gilbert J., Co.
Eitel, Inc.
Eldridge Buick Co.
Electric Storage Battery Co.
Electric Vacuum Cleaner Co.
Elitch Gardens Co.
Epply Hotels Co.
Escelante, Jose Co.
Factor, Max & Co.
Famous Players Lasky Corp.
Faultless Starch Co.
Fellows Gasoline Co.
Felton Sibley & Co.
Ferrara Pan Confections Co.
Fitzpatrick Bros., Inc., Chicago, Ill.

Fleischmann Co.
Foege, John & Son
Folger, J. A. & Co. (Pacific Coast Display only)
Fontana Hollywood Co.
Foor & Robinson Hotels Co.
Forbes Tea & Coffee Co.
Ford Motor Co. (Including dealer accounts)
Four Wheel Drive Co.
Franklin Trust Co. (Philadelphia, Pa.)
Freed Eisemann Radio Co.
Freihofer Baking Co.
Freihoefer, Wm., Baking Co.
French, R. T. Co.
French Lick Springs Hotel
Furness Bermuda Lines
Fryac Mfg. Co.
Gardner Motor Co. (Including dealer accounts)
General Motors Chemical Co.
General Motors Co. (Unnamed car)
General Petroleum Co.
General Storage Battery Co.
General Tire & Rubber Co.
Gibbons & Gordon Hardware Co.
Gibbs Preserving Co.
Gilbert, A. C., Co.
Gill, J. K., Co., Portland, Ore.
Gilpin Langdon & Co.
Glenwood Springs Chamber of Commerce (Local)
Globe Electric Co.
Golden Key Milk Products Co.
Golden State Milk Products Co.
Golden West Knitting Mills

Goldman, Wm. P. & Bros.
Good Grape Co.
Goodman, A. & Sons
Goodrich Transit Co.
Gould Dreadnaught Battery
Gould Storage Battery Co. (Including dealer accounts)
Graham Bros.
Great Lake Auto Products Co.
Great Northern Railroad
Great Western Sugar Co.
Greater Louisville Bldg. & Loan (Local)
Green Circle Products Co.
Grinnell Company
Grunewald Caterers
Hamilton-Carhartt Cotton Mills
Hardeman, J. T., Hat Co.
Hanff Metzger
Harrow Taylor Butter Co.
Harris, Goar Co.
Harris, Frank & Sons
Harrison Radiator Co.
Hearst Properties (International) (Chicago American)
Hedstrom-Schenck Coal Co.
Heinz, H. J., Co.
Henrici, Philip, Co. (Local)
Hills Bros. Co.
Hirsch Weiss (Tents)
Hirsch Wickwire Co.
Hoffman, Paul G., Co., Los Angeles, Cal.
Holley Carburetor Co.
Holstein Products Co.
Home Electric Co., Phila.

Horn & Hardart
Horstmann, Wm., Co.
Hotel Knickerbocker, Atlantic City
Hotels Statler Co., Inc.
Hupp Motor Car Co. (Including dealer accounts)
Hyatt Roller Bearing Co.
Illinois Central Railroad
Illinois Merchants Trust Co. (Chicago, Ill.)
Independent Oil Companies (Various cities & towns)
Indian Refining Co.
Individual Drinking Cup Co.
Industrial Loan Co., St. Louis, Mo.
International Coffee Co.
Interstate Grocer Co.
Ice Cream Package Co.
Ives Mfg. Co.
Jaeger, Oswald Baking Co.
Jantzen Knitting Mills
Jerry Jane, Inc.
Jewell Tea Co.
Jewett & Sherman
Joannes Bros.
Johnston, Robt. A., Co.
Jones Store Co., Kansas City, Mo.
Ju-Ji, Inc.
Jell Well Dessert Co.
Kaestner & Hecht Co.
Kahn, E., & Co., Chicago, Ill.
Kauffman, Chas. & Bros.
Katmaier Coal Co.
Kenton Baking Powder Co.
Keystone Roofing Co.

Jordan Motor Car Co. (Including dealer accounts)
Jones Dairy Farm Co.
Keystone Varnish Co.
King Candy Co.
Klaxon Co.
Kleiber & Co., San Francisco
Kleinert, I. B., Rubber Co.
Kolb Building Co.
Kraft, J. L., & Bros. Co.
Lakeland, Fla., Chamber of Commerce
Laprez, Thos. J., Inc.
Lee, H. D., Mercantile Co.
Lever Bros. (Olva Soap only)
Libby McNeil & Libby
Liberty Central Trust Co., St. Louis, Mo.
Liberty Products Co.
Lit Bros., Philadelphia, Pa.
Log Cabin Baking Co.
Louisville Used Car Co. (Local)
Luick Ice Cream Co.
Lumaghi Coal Co.
Lubrite Refining Co., St. Louis, Mo.
McCawley & Co.
McCord-Brady Co.
McCray Refrigerator Co.
McFadden Publications
Made Good Ice Cream Co., Tamaqua, Pa.
Mallinson, H. R., & Co.
Majestic Electric Appliance Co.
Mann, Wm., Co.
Marigold Dancing Gardens, Chicago, Ill.
Marine Bank & Trust Co., New Orleans, La.

Mason Tire & Rubber Co.
Maury Cole, Inc.
Maxwell Motor Sales Corp. (Including dealer accounts)
May Breath Co.
Mercantile Trust Co., St. Louis, Mo.
Merchants National Bank, Richmond, Va.
Meriden Creamery Co., Kansas City (Local)
Metropolitan Business College, Chicago
Mexican Petroleum Corp.
Meyer Bros. Coffee & Spice Co.
Midland Flour Milling Co.
Migel, J. A., Inc.
Millard Hats, Inc.
Miller, E. C., Cedar Lumber Co.
Miller Mfg. Co. (Ready built houses)
Milwaukee Corrugating Co.
Minnesota Co-op. Creameries
Mishawaka Rubber & Woolen Co.
Missouri Pacific Railroad
Mohawk Rubber
Model Baking Co. (Local)
Morris Plan Bank of Cleveland
Moon Motor Car Co. (Including dealer accounts)
Music Master Corp.
Nash Motors, Inc., (Including dealer accounts)
National Beverage Sales Co.
National Family Laundry, New York
National Fruit Flavor
National Grocery Co.
National Petroleum News
National Refrigerator Co.
Neustradter Bros.

Newmark Bros.
Norris, Inc.
Northern Kansas City Development Co.
Northern Indiana Gas & Elec. Co.
Northern Pacific R. R.
Northwestern Yeast Co.
Novelty Mill Co.
Nugrape Bottling Co.
Nugrape Bottling Co. of Atlanta
Nugrape Co. of Alabama
Nugrape Co. of America
Nugrape Co. of Delaware
Nugrape Co. of Florida
Nugrape Co. of Louisiana
Nugrape Co. of Tennessee
Nugrape Co. of Washington, D. C.
Nunnally Co.
Nunn Bush Weldon Shoe Co.
Oakland Motor Car Co. (including dealer accounts)
O'Bryan Bros.
Olson Rug Co.
Olympia Knitting Mills
Olympia Oyster Growers Assn.
Ontra Cafeteria, (Chicago and vicinity)
Oppenheimer, A. E., Co.
Orange Crush Co.
Oregon City Woolen Mills
The Pabst Corp.
Pacific Coast Biscuit Co.
Pacific Coast Coal Co.
Pacific Power Light Co.
Pacific Coast Shredded Wheat Co.

Pacific Steamship Co. (Admiral Line)
Packard Motor Car Co. (Including dealer accounts)
Pan-American Petroleum Co.
Pan-American Petroleum & Transport Co.
Paraffine Companies
Parker Gordon Cigar Co.
Parker Pen Co.
Parsons-Scoville Co.
Paul, J. C. & Co.
Pedrick, Frank J. & Son
Peet Bros. Co.
Penick & Ford, Ltd.
Penn Tobacco Co.
Pennzoil Co.
Peoples Gas Light & Coke Co., Chicago
Peoples Gas Stores, Inc., Chicago
Pet Milk Co.
Phelan Faust Paint Mfg. Co.
Puget Sound Power & Light Co.
Phenix Cheese Co.
Phillips Jones Corp.
Planters Nut & Chocolate Co.
Poole Engineering & Machine Co.
Pooley Co.
Popper, E. & Co.
Portland Chamber of Commerce, Portland, Ore.
Power Plant Engineering Co., Seattle
Premier Vacuum Cleaner Co.
Public Ledger
Public Service of Northern Ill.
Puhl, John, Products Co.
Puroxia Co.

Quinby, W. S., Co.
Radio Corp. of America
Red Rock Creamery
Regular Democratic Organization, New Orleans
Reliance Mfg. Co.
Rexall Club
Richards Wilcox Mfg. Co.
Richardson Corp.
Ridenour Baker Grocery Co.
Rosenberg Bros. (Fashion Park Clothes)
Rumford Chemical Works
Salmen Brick & Lumber Co.
San Francisco Bulletins
Sauers Milling Co.
Sawyer Biscuit Co.
Schalk Chemical Co.
Scheidt, Adam, Brewing Co.
Schmitt Bros. Tobacco Co.
Schoenhofen Co.
Scruggs, Vandervoort & Barney Co.
Scudders Gale Grocery Co.
Seacrest Laundry, Woodside, L. I.
Seeman Bros.
Seidenberg & Co. (American Cigar)
Sherwin Williams Co.
Simplex Windshield Wing Co.
Sitroux Importing Co.
Skelley Oil Co.
Smith, J. P., Shoe Co.
Southern California Fair Assn.

Spalding, A. G., & Bros.
Stanard Tilton Milling Co.
Standard Oil Co. of La.
Standard Oil Co. of N. Y.
Standard Oil Co. of N. J.
Stanley, John T., Co.
Steinhart & Bros., N. Y.
Stewart Sand Co.
Stewart Warner Co.
St. Louis Dairy Co.
St. Louis Post Dispatch
St. Mungo Mfg. Co.
Streckfus Steamboat Lines
Stromberg Motor Devices Co.
Sugar Creek Creamery Co.
Sulzer, Carl & Co.
Sunland Laboratories
Supplee-Wills Jones Co.
Sweet Candy Co.
Sweet Orr & Co.
Twin City Milk Producers Assn. (St. Paul)
Twitchell Champlin Co.
Tilo Roofing Co.
Toch Bros.
Trakis, James
Three Minute Cereal Co.
Union Oil Co. of Cal.
U. S. Bedding Co.
U. S. Polo Assn.

- U. S. Rubber Co. (Shoes and mechanical goods
division)
- Utilities Securities Co., Chicago, Ill.
- Val Blatz Brewing Co.
- Valier Spies Milling Co.
- Van Engers, Inc., Chicago, Ill.
- Van Slyke, G. W. & Horton
- Vibration Specialty Co.
- Vulcan Spring Sew. Corp., St. Louis, Mo.
- Warner Chemical Co.
- Washington University, St. Louis
- Webb, Thos. J., Co.
- Weil-McLain Co.
- Wellman Peck Co., Seattle
- Western Auto Supply Co., Los Angeles, Cal.
- Western Meat Co., San Francisco, Cal.
- Wieland Dairy Co.
- Wilbur, H. O., & Sons
- Williams, O. B., & Co., Seattle, Wash.
- Williams Oil-O-Matic Co.
- Willys-Overland Co. (Including dealer accounts)
- Wills Sainte Claire Auto Co. (Including dealer
accounts)
- Winters Oil Co.
- Wisconsin & Michigan Transportation Co.
- Wooden Cigar Box Boosters Club
- Wright, A. E., Co.
- Young, Chas. W., & Co.
- Zinsmaster Baking Co.

EXHIBIT "B"

DIRECT ACCOUNTS

Abbots Alderney Co.
Absorbene Manufacturing Co.
Alabama Georgia Syrup Co.
Alcazar Range & Heater Co.
Allen A. Company
Amendt Milling Co.
American Chicle Co.
American Oil Co.
American Stove Co., (Quick Meal Division)
American Tobacco Co.
American Varnish Co.
Anderson, Duerlin & Varnell
Armour & Co.
Associated Exhibitors
Atkins, E. C., Co.
Atlantic Refining Co.
Atlas Dye Works
Baker Importing Co.
Beech-Nut Packing Co.
Bittersweet Products Corp.
Blackstone Mfg. Co.
Block Bros. Tobacco Co. (Paint only)
Blue Valley Creamery Co.
Bobrow Bros.
Bock-Stauffer Co.
Bond Clothing Co.
Boyce-Veeder Corp.
Bradley Knitting Co.
Backarach Co.
Burk, L., Inc.

California Prune & Apricot Assn.
Campe Corporation
Capitol City Products Co.
Carr Fastener Co.
Cheek-Neal Coffee Co.
Chelmsford Co.
Chicago, Burlington & Quincy R. R.
Chicago, North Shore & Milwaukee R. R.
City of Jacksonville
Clicquot Club Co.
Coffee Products Co.
Colgate & Co.
Commercial Poster Co.
Commonwealth Film Corp.
Commonwealth Shoe Co.
Congress Cigar Co.
Consolidated Cigar Co.
Corn Products Refining Co. (Posting only)
Cosmopolitan Productions
Coca Cola Co. (paint only)
Crane Company
Creamette Co.
Critchell, Miller, Whitney & Barbour, Inc.
Cox Gelatine Co.
Coral Gables
Cudahy Packing Co.
Daggett & Ramsdell
Deisel Wemmer Co.
Durham Duplex Razor Co.
Eline's, Inc.

Fairbanks, Douglas, Pictures Corp.
Famous Barr Co.
Felin Co., John J.
Film Booking Co.
Firestone Tire & Rubber Co.
Fisk Tire Co.
Fishback Co.
Folger, J. A. (Pacific Coast Bureau balance direct,
Eastern Division)
Foreman's, Inc.
Fox Film Corp.
France Milling Co.
Frankoin Knitting Mills
Globe Automatic Sprinkler Co.
Gohamn Bros. & Kohler Co.
Golden Gate Mfg. Co.
Goodyear Tire & Rubber Co.
Grimes, David, Radio & Cameo Record Corp.
Ground Gripper Shoe Co.
Heco Envelope Co.
Hellman, Richard, Inc.
Hickey Freeman Co.
Hires, Chas. E., Co.
Hohner, M.
Hood Rubber Co.
Hormel, Geo. A., Co.
Horton Ice Cream Co.
Hotel Prince George
Hotel Sinton

Hotel Wendell
Houdaille Co.
Hudson River Day Line
Household Products, Inc.
Jackson Brewing Co.
Inspiration Pictures, Inc.
International Harvester Co.
Ionic Mills
Jayne, Dr. D., & Son
Jersey Cream Coffee Co.
Johnston, R. F., Paint Co.
Karpen, S., & Bros.
Keebler-Weyl Baking Co.
Kelly Springfield Tire Co.
Kerr Bros.
Kirk-Maher Co.
Kroehler Mfg. Co.
Krueger Brewing Co.
Kuppenheimer, B., Co.
Lambert Trublpruf Tire Co.
Lee Rubber Co.
Leggett, Francis H., & Co.
Lewis Medicine Co.
Liggett & Myers Tobacco Co.
Little Crow Milling Co.
Loose-Wiles Biscuit Co.
Lorillard, P., & Co.
Lovejoy Mfg. Co.

Lyon & Healy
Miltiades Melachrino Co.
Manhattan Rome Co.
Manhattan Soap Co.
Macy, R. H., & Co.
Mar-O-Bar Co.
Marquette Cement Co.
Marvel Paint Stores, Inc.
Mauil Bros.
Memphis Baking Co.
Merrell Soule Co.
Miami Chamber of Commerce
Mickelberry's Food Products Co.
Miller Rubber Co.
Mayflower Hotel of Washington, D. C.
Morgan, Enoch Sons, Inc.
Motor Magazine
Mueller, Chas. F. & Co.
Munsingwear Corp.
National Biscuit Co.
Nebraska Clothing Co.
Nelson Mfg. Co.
Niagara Wall Paper Co.
Nichols, Anne
O'Cedar Corp.
Old Monk Olive Co.
Omaha Flour Mills Co.
Oshkosh Overalls

Oswego Candy Co.
Palmolive Co.
Panama Pacific Lines
Paris Medicine Co.
Park Pollard Co.
Paxton & Gallagher
Peabody, H. W., Co.
Price Flavoring Extract Co.
Philadelphia Electric Co.
Pierce-Arrow Motor Car Co.
Pines Winterfront Mfg. Co.
Pittsburgh Plate Glass Co.
Planert, F. W. Co.
Prescott, J. L. Co.
Principal Pictures Corp.
Proctor & Schwartz
Pure Oil Co.
Puritan Malt Extract Co.
Pyrene Mfg. Co.
Raab Bros.
R. B. Clothing Co.
Raybestos Co.
Red Top Malt Extract Co.
Red Wing Milling Co.
Reed & Barton
Renown Pictures, Inc.
Reymer Bros.
Reynolds, R. J. Tobacco

Richard Shoe Co.
Rothchild, M. L.
Royal Baking Powder Co.
Saegertown Mineral Water Co.
Scandinavia Belting Co.
Schield, Wm., Mfg. Co.
Sears Roebuck Co.
Seeley's, G. B. Sons
Stone Baking Co.
Standard Radio Corp.
Snyder's, Inc.
Southern Service Corp.
Southern Spring Bed Co.
Southern Tire & Rubber Co.
Standard Oil of Indiana (Paint only)
Stearns, Frederick B., & Co.
Stein Bloch Co.
St. Louis Independent Packing Co.
Sterling Remedies, Inc.
Street, J. D., & Co.
Stroehmann Baking Co.
Sullivan, R. G.
Sunbeam Chemical Co.
Sun Oil Co.
Sweets Co. of America
Tasty Baking Co.
Tebbetts & Garland Co.
Texas Co.

(Testimony of Frank T. Hopkins)

Thermoid Rubber Co.
 Tomson, P. C., & Co.
 Trommer, J. F., & Co.
 Ultramarine Co.
 United Autographic Reg. Co.
 United States Tire Co.
 U. S. Gypsum Co.
 Upmann, C.
 Upson Co.
 Vick Chemical Co.
 Vitagraph, Inc.
 Waitt & Bond, Inc.
 Walgreen & Co.
 Waltke, Wm., Soap Co.
 Ward, Montgomery Co.
 Warner Bros. Pictures, Inc.
 Watson, John Warren Co.
 Weideman Co.
 West End Brewing Co.
 Whistle Co.
 Williamson Candy Co.
 Wrigley, Wm. J. Co.
 Wurlitzer, Rudolph Co.
 Wupperman, J. W.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
 Exhibit No. 221 for ident later in evid. Filed 1/16 1935
 R. S. Zimmerman, Clerk By Cross Deputy Clerk

(Testimony of Frank T. Hopkins)

BY MR. STERRY:

During the time that contract was in effect, the Bureau cleared most of its advertising business through the G. O. A. but not all of its business at any time. During that time, the G. O. A. had plants throughout all of the territory in which the Cusack Company had had plants previously and in considerable other territory besides. Generally speaking, the G. O. A. had plants in most of the larger cities in the Middle West and East and South. It had none on the Pacific Coast.

During the time that the Bureau business was placed through the G. O. A. we had contracts for posting in the United States, other than the Pacific Coast, where the G. O. A. didn't have plants. During that time the advertiser, or the agency placing the business, always had the designation of the plants as to whether general outdoor advertising business or the posting was to be done on the Pacific Coast and in other parts of the United States.

The Bureau has never attempted to designate the plants on which posting or paint should be done, except where the agency or the advertiser has not directed it.

That contract, Plaintiff's Exhibit 221, was terminated in the fall of 1929, I think, and shortly after that the Bureau opened an office on the Pacific Coast for the purpose of competing for business originating on the Pacific Coast with all those who might secure business, including Foster & Kleiser Company; also to render service on the accounts which we had originating on the Coast and to render service with respect to accounts which we had originating in the East and other parts of the country.

(Testimony of Frank T. Hopkins)

From 1929 on, we attempted to have a complete listing of all plants, whether they were Foster & Kleiser's or independents or Association members or not. It made no difference whatever as far as our listing of them or offering for use or using them was concerned.

Q Have you ever had any contract since 1929, or before then, or any time, with Foster & Kleiser, as to placing any business with them whatever?

A No, sir.

Q Has any business which has been cleared through the Bureau that has been put on the plant of Foster & Kleiser ever been put there except at the direction of the advertiser or the advertising agency?

A Never.

Q Is that also true of whatever business that has come through the Bureau that has been placed in competitive plants on the Pacific Coast?

A Yes, sir.

The Bureau takes its poster contracts only from advertising agencies. We do not deal direct with advertisers. We give the agencies estimates, and if these estimates become contracts or orders, we send out sublet contracts to the plants in all of the towns all over the country that have been designated in the contract or in the estimate; in the original estimate if there are any towns that have competitive plants, we submit those to the agency for a decision as to which plant they want to use. That decision is sometimes made by a representative of the advertiser or of the agency who has knowledge of the situation or possibly by the local dealer. When that is done, all the orders are sent and then we have to

(Testimony of Frank T. Hopkins)

go through the process of correspondence in securing the dates for posting which we desire and the distribution of the orders by the different plant owners in their town. When we have all of their acceptance in and the time comes for paper, we furnish all of the instructions to the lithographers for shipment of paper, including labels to be put on packages, and so forth. We also furnish all the necessary instructions to the plant owners in respect to the distribution of the paper.

When the bills come in we check those bills and make the payments to the plant operators.

As a matter of law, I do not believe that we guarantee the payment of the bills to the plant owner. In practical operation, we pay the plant owner whether we collect from the advertiser or agency or not. We charge a standard commission, that is, one that is generally recognized in the field of outdoor advertising, which is the usual $16\frac{2}{3}$ per cent commission which is allowed any source of business. The basis on which we operate at the present time is that we give the agency 13 per cent of that $16\frac{2}{3}$ per cent, and we operate on a gross commission of $3\frac{2}{3}$ per cent.

We have several member agencies on the Pacific Coast who are members of our Bureau that clear their own business direct without putting it through the Bureau. When I said that the Bureau came out here to compete with Foster & Kleiser and others for business, I meant that Foster & Kleiser are taking business either from the agencies independent of us or from the advertiser direct.

(Testimony of Frank T. Hopkins)

Q Do you know of your own knowledge of the advertising game why Foster & Kleiser Company obtained 90 per cent or 85 per cent or 95 per cent of the outdoor advertising business?

A I don't know what the percentage is. Of course, I know it is a very large proportion of all the business that goes on, on the Coast; and that is obtained very largely because of two things: First, the facilities and the reputation which they have to offer, and secondly, by their own aggressive representation of their own business to the advertisers, agencies, and others, and their own selling method, and their reputation for having good service and proper and adequate facilities throughout the Coast. Foster & Kleiser have been very aggressive over a period of a great many years, and have to a very large extent set the example for service in the outdoor advertising business for all plant owners .

I am familiar with the general run of outdoor advertising plants in the larger cities of the United States. The services of Foster & Kleiser on the Pacific Coast have the reputation of being the best of any service rendered by poster companies throughout the country. Their service compares favorably with those of any other company in the business.

Q Do you know what the reputation throughout the advertising world of Foster & Kleiser is for advertising service?

MR. GLENSOR: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Sustained. The reputation of Foster & Kleiser, except along the line attacked in this complaint, is not in issue here.

(Testimony of Frank T. Hopkins)

Mr. Sterry argued that it was permissible to show that one of the reasons why Foster & Kleiser Company got their business was because it had the reputation for the best service in the country and that it was an element to be weighed by the jury.

THE COURT: No, I don't believe you can show that by showing its general reputation. The ruling may stand.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 225.

Witness continuing: Within my knowledge over the period of the last 25 years and ever since I have been in the business, Foster & Kleiser Company has made very aggressive efforts to sell the Pacific Coast as a field for outdoor advertising. In the early days, Mr. Foster and Mr. Kleiser and other members of the company made trips to the East and visited other companies in the business. In later years these efforts have been made through the establishment of contact offices in charge of resident managers and with other employees in the cities of New York and Chicago.

In every case we give the agency and advertiser an estimate showing competitive plants where there is more than one plant in the town and where we think there is enough service to be worth listing at all, because it requires a considerable capacity in a posting plant to make it available for use by a national advertiser.

To sell to national advertisers a plant must be of sufficient capacity so that you can know that you can buy a

(Testimony of Frank T. Hopkins)

generally distributed showing along the line of what we term a standard set showing.

The standard set showing is one of the principal features adopted by the Association. It made it possible to sell the medium without the selection of individual showings on the basis of obtaining the advertiser's confidence that he would get approximately the same kind, type and value of showing that anyone else got in the same city and town. The theory of the standard set showing is an equal division of the showings among different advertisers. In a city of 250,000 to 300,000 population, such as Oakland, we would expect a plant to have at least a considerable number of what we call representative showings, sometimes called half showings. From the standpoint of the national advertiser, to be of any particular interest to us, we would certainly expect that a plant in a city of that size would have available five or six representative showings so that we would have some fair possibility of being able to get one when and if we wanted it. If a plant owner in a city of that size only had one showing and it was sold or part of it was sold, the owner would have nothing available for anybody else. A plant operator in a town of 250,000 people could not hope to attract any considerable amount of national business if he had no more than one or one and one-half representative showings and no reserve space. He might have one national advertiser and if he had his space sold continuously to that advertiser and had built it particularly for that one, it would be all right. But if he were presenting it generally, I would say that he would have practically no chance of selling it that way because there wouldn't be

(Testimony of Frank T. Hopkins)

enough of it to be of any interest to the advertisers generally. When we are placing orders we have to have some reasonable prospect of being able to get the space. Another factor in a small plant is that it is almost invariably sold as a selective proposition to local advertisers, and after a few selections are made, there is nothing left in the way of a standard set showing. Small plants are hardly ever sold on standard set showings.

Personally, I don't know whether any attempt has been made by Mr. King or any agency on his behalf to list the facilities of the Special Site Sign Company with the Bureau. I would have to refer to Mr. Chappelle, our Pacific Coast representative, to find that out. If a plant operator expects to get any national business there is very decidedly a necessity for him to have a uniform price which he quotes to all advertisers and all agencies alike. Unless he had such a uniform price he would certainly make everybody except the one who got the lowest price decidedly antagonistic to him, and I don't believe that even the one who got the lowest price could feel any great confidence in him.

If a plant owner adopted a policy of going directly to the advertiser and attempting to sell his service over the head of the agency, I should say that that policy would be deadly to his chances of getting national business because the great bulk of national business is handled by the agencies and if they did not handle it and did not collect a commission on it, they would naturally try to kill it; and most of them are powerful enough to kill it.

When the Bureau was first formed, the advertising agencies had not reached the same power in the field of

(Testimony of Frank T. Hopkins)

advertising that they have today. They have continued to progress right along as a factor in the placing and handling of all advertising. At the present time they place practically all of the large advertising accounts in all mediums.

Q Mr. Hopkins, I want to read to you the last elements of a hypothetical question put to Mr. King by Mr. Glensor. The preceding elements are steps about which I don't think you have testified; but Mr. King was asked to assume—"and further assume that the independent companies, including the Special Site Sign Company, had been able to obtain national accounts prior to March 13, 1931, freely, that is, in free and open competition with the Association plants owned by Foster & Kleiser franchise plants, and had also been permitted or could have participated in the business developed by the National Outdoor Advertising Bureau, through the agencies that were members of and composed that Bureau." Now, take those elements—he is asked to assume those to be true; I will ask you if there has been any time when those elements were not true?

A Never, so far as the Bureau is concerned.

Q Well, that is what I am asking you.

A Or any of the agencies.

Q Well, is there any time that that has not been true so far as any of the agencies are concerned?

A None that I know of—any one.

In my opinion, based upon my knowledge of the advertising business which I gained with the Thomas Cusack Company, the general knowledge gained from all

(Testimony of Frank T. Hopkins)

departments of the business with which I have been familiar, I would say that the membership which Foster & Kleiser had in 1920 and at all times since in the Poster Advertising Association and the Outdoor Advertising Association certainly had a very large, intrinsic, monetary value. I do not know of any way of fixing that value. Even though those companies do not themselves actually sell business or make contacts with business, their memberships would have an actual, monetary value because that was the operation of these associations and the things that they did and have done and continue to do that has made national outdoor advertising possible at all. The standardization, promotion of the medium by selling, the bringing together of the plant operators with other associations and advertisers' organizations, the publishing of material of promotional type, the meeting of criticism by organizations that were opposed to the medium and things of that kind, have created favor to the medium. The Poster Advertising Association has not sold outdoor advertising in the sense that it took orders and placed them with plant owners but by the activities above enumerated and others, they have been a very important element in the sale of outdoor advertising.

Q Well, do you think the membership in that association had any tendency to bring advertising business to Foster & Kleiser or to any of its other members?

A Well, I am quite sure that it has always had a tendency to bring business to members of the Association.

Q How, if there are no contracts with advertisers and agencies to give their business?

A Because of the reputation which the Association had built up for the medium, and of its members, and the

(Testimony of Frank T. Hopkins)

standards which the Association members practice, or are supposed to practice. Of course, there were some black sheep, I guess, even in the Association, and there still are. But by and large, it was known to the advertiser that there were certain standards of practice which were approved by the advertiser, and all of those were arrived at through long years of experience and through consultation with the advertisers themselves, and with agencies; and they believed that they would get the kind of service that they wanted. Perhaps the best basis for my belief of that is that I know when the Thomas Cusack Company withdrew from the Association, that it lost a lot of business. In fact, I think it was the beginning of the end of the Thomas Cusack Company.

When I say they lost a lot of business, I mean that they lost regular clients and customers that had been on the boards of the Cusack Company for many years. In practically all of the cities in which that company operated there were no competitive plants, and even some of the advertisers even sponsored the building of competitive plants under the Association banner and ruined the Thomas Cusack Company.

What I have said of membership in the Poster Association would not be true to the same extent of a membership in the paint association, the Outdoor Advertising Association. The paint business is much more complicated and involved than the handling of posting. Originally, the paint business of national character was mostly handled all the way through by one operating organization that got the contract. In its early days, the Thomas Cusack Company operated throughout the entire

(Testimony of Frank T. Hopkins)

United States. If it got a contract for a number of boards it sent its own paint and construction crews all over the United States, erected the boards and painted them. This was because there were no facilities at all to get the service through other plant operators. The Bureau has handled paint nationally as well as posting. The method of handling paint by one company has been out of vogue for many years. Nowadays paint contracts are sublet to the paint operators who have the facilities to operate in particular territories. Paint is usually sold as to specific locations, that is, the locations are actually selected and the paint contract is usually for a longer time than the poster contract. The unit of a poster contract is 30 days. Painted displays are usually sold for a year or longer and they are picked out according to the value of the individual location regardless of who happens to own the location.

Q Mr. Hopkins, was it of any advantage to Foster & Kleiser, in your opinion, to have a uniform service throughout the Pacific Coast?

A Well, it would seem to me it would be of very great advantage; in fact, it has been a great advantage to us in other sections of the country to have a uniform service and a high class of service throughout the Coast.

Q How has it been any advantage to you in other sections of the country?

A It has been an advantage to us in having as high a type of service as they have on the Coast to give outdoor advertising a reputation as a good medium of advertising. Many of our best advertisers, biggest advertisers, come to the Pacific Coast and they see the advertising

(Testimony of Frank T. Hopkins)

on the Pacific Coast and they get a favorable impression of the medium. It has been a great help to us in the national sale of the medium.

The Pacific Coast has a decided advantage over many sections of the country in that it has an open, year-round climate during which outdoor advertising can be used effectively which is not the case in a good many other sections. If there had been no uniform outdoor advertising service throughout the Pacific Coast in the last ten years and if there had been any real gaps in the large cities of the Coast, it would certainly have lowered the volume of outdoor advertising business very greatly.

Q Assume that in 1916 Foster & Kleiser Company had passed out of business, on the Pacific Coast, and no other company had taken its place to give a uniform or anywhere near similar service on the Pacific Coast and there had been simply a series of smaller and independent companies, owned by plant operators in the various cities: What effect, if any, on the volume of business done on the Pacific Coast would that have had, in your opinion?

MR. GLENSOR: Just a minute, if your Honor please. I think I will object to the question upon the ground that it is a hypothesis based upon a hypothesis; there is no foundation in fact. Purely speculative—if something had happened and if something else had happened, then what would have happened? I don't think it throws any light on the issues in this case for the witness to speculate on what might have happened if these other things had happened.

MR. STERRY: Mr. King has testified if we did not do the business, he would have had a very great volume of

(Testimony of Frank T. Hopkins)

business. Now, I ask further, and I want to show that in the opinion of this man, who is certainly qualified to speak, there wouldn't have been any national business on this Coast to have amounted to anything. Now, that is the purpose of the question, your Honor.

THE COURT: Objection sustained.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 226.

Witness continuing: The trend of the outdoor advertising business generally throughout the country was very decidedly upward beginning shortly after the War, when we had a boom in business, and it continued upward through the year 1928. To my knowledge, in the year 1929 there began a very decided decline which has continued through the year 1933. There has been a slight upward trend in national advertising in 1934. The decline in the proportion of dollars spent on advertising started before the market crash of 1929, due to possibly many intangible causes. One direct cause was the competition from radio broadcasting, which still persists as a very formidable competitor, and national business has also been affected by the nation-wide depression which manifested itself in the first place by the cancellation of a great many contracts and which has since manifested itself through the fact that we have not been able to get the volume of business that we had before and by the demands of agencies and advertisers for more service for less money. I should say that the volume of business has

(Testimony of Frank T. Hopkins)

shrunk probably more than 50 per cent. If there is any plant in the country, large or small, which has been operated at a profit from 1930 on, I don't know of it.

To my knowledge the Bureau has dealt entirely freely with a number of the so-called independent plants on the Pacific Coast and has placed business with them. Personally I have not had any contacts with those plant owners and for first-hand information I would have to refer you to our Pacific Coast representative. As head of the Bureau, I know that there has been quite a variation in the sales policy in these so-called independent plants which has made it rather difficult for us to handle their business.

From my experience in the outdoor advertising business, I have found that in the conducting of a plant in a city of any size at all, the loss of advertising locations and leases is a perfectly necessary and continuous hazard of the business. I have operated plants which have been in competition with other plants. The necessary effect of such competition on lease rentals is that the rentals go up and the cost of leasing is increased.

Q Now, the plaintiff has testified in this case that his plant has consisted of from 100 to 300 locations, varying in point of time; that during the years he has been in business from 1916, I think, when he went in business—when I say “he”, it is a corporation, and Mr. King is the sole owner—from the time of the incorporation of the business in 1916 down to 1934, or 1933, I forget which, he testified he has lost approximately 60 locations through the claimed interference of Foster & Kleiser Company, or an average of between three and four locations a year.

(Testimony of Frank T. Hopkins)

I want to ask you if in your opinion the loss of that number of locations per year, whether they be what is denominated key locations or otherwise, would have any appreciable effect upon the operation of an outdoor advertising plant?

A Well, it seems to me that that is such a small loss that it would have practically no effect.

Q If you were to undertake the operation of a plant in a city of two hundred thousand or more, would you necessarily anticipate the loss of at least that number of sites?

A I would anticipate the loss of a great many more than that from all causes. And if I were in a competitive town, I would expect it to be much higher than that.

Q You would expect it to be much higher than that from competition alone?

A Yes, sir.

I remember discussing with Mr. Kleiser the taking over of the plant here in Los Angeles and I remember the situation in reference to the plant. At that time the ordinance situation in Los Angeles was a matter of great concern to us all over the East, because our experience is that wherever there has been an adverse condition of that kind, that that information was distributed by organizations opposed to outdoor advertising all over the country and it immediately results in a great many of adverse ordinances and agitation in other cities in other states. If there had been a zoning ordinance passed in Los Angeles restricting the size of boards so that national advertising could not have been carried on, it would have had a very decided effect on the outdoor advertising business

(Testimony of Frank T. Hopkins)

throughout the country. Any condition of that kind in any place would have a decided effect, because one of the most important things in the selling of the poster medium, particularly national, is to be able to deliver the same kind and type of service in every single place that the advertiser may want it; and any single gap in that always is a detriment to the whole proposition and causes a loss of business.

One of the great difficulties originally in selling the idea of outdoor advertising to the manufacturers was the lack of uniformity in the display and it was not until the boards and the size of paper and everything had become standardized through the efforts of the Association so that the showing was approximately uniform, that we could compete with the other media.

CROSS-EXAMINATION

BY MR. GLENSOR:

Q Mr. Hopkins, if you were a plant owner in Oakland, a city of 280,000, and had about two or three thousand boards there, about Foster & Kleiser's plant, and you had a competitor of the type and character of the Special Site Sign Company with, oh, I think his maximum plant all over, everywhere, was 600 boards in the last ten years and it has been down as low as 200 and something, and you wanted to prevent that competitor from getting national business, one of the best ways that you could do so would

(Testimony of Frank T. Hopkins)

be to keep him moving on his locations so that he never could make up a showing, wouldn't it, a complete, full showing so he could sell national business?

A If he never had a complete, full showing, he certainly would not be likely to get any national business.

Witness continuing: To keep him from having enough locations would be one of the most effective ways of seeing to it that he never got any national business.

I think it is true that the loss of leases in the outdoor advertising business is a necessary and continuous hazard. There is bound to be a certain normal turnover due to change in ownership, buildings being erected, zoning legislation, etc.

Q Yes. Now, if, in addition to this necessary and continuous hazard of normal loss of locations, you had a competitor owning, we will say, a plant many times greater than yours, who had a corps of leasemen constantly and continuously going to see these lessors of his and making them offers sometimes for your locations and sometimes getting leases on these locations, and in other ways, various ways, disturbing your relations with your landlords, you would think that was an unnecessary hazard, wouldn't you, as a practical thing?

A I would certainly expect it if I went into and built an outdoor advertising plant where there was one already.

(Testimony of Frank T. Hopkins)

Q All these plants where you have worked, that is, with the Cusack Company, they had those conditions, did they?

A Every place I know of where there have been competitive plants there has been competition for locations.

When I said on direct examination that in the early days there was a school of thought that outdoor advertising should be sold by exclusive solicitors, I did not have in mind the official exclusive solicitors established by the Poster Association, but had reference to the direct sale to the advertiser as opposed to selling through advertising agencies. I know that the Poster Association established exclusive and official solicitors back in 1911, and that there was a change of some kind around 1911, and the number was reduced and then later on still further reduced.

I know that these official solicitors were certainly limited to the sale of the outdoor medium. That was one of the things that we undertook to convince the industry was wrong when we thought the agencies should be recognized. These official solicitors or exclusive solicitors were obliged to pay a consideration of some kind for the service which was rendered by the Association and there still is a fee paid to the Association for its service which recognized sources of business pay. I don't know whether these exclusive solicitors sold advertising exclusively for the plants of Association members. I am not qualified to testify with

(Testimony of Frank T. Hopkins)

respect to the actions of the Association at that time because I had nothing to do with it directly. The situation of having solicitors has continued right on down until now. I don't know that they were cut off at the time of the formation of the Bureau.

I couldn't state that the Cusack Company dominated or endeavored to control the Association along about 1918 or 1920. They owned plants in many towns which had memberships in the Association and I think they perhaps had more Association memberships than any other single company. The Cusack Company had nothing whatever to do with the organization of the Bureau and the original contract between the Bureau and the Cusack Company was not made until several years after the organization of the Bureau. After the contract was made, the Bureau cleared its business through the Cusack Company, that is to say, if we received a contract from the agency, my recollection is that ordinarily we immediately assigned the contract to the Cusack Company and in some very few instances we placed a contract with somebody else. We assigned the whole contract to the Cusack Company and they distributed it in turn to the plants on which it was to go. It made no difference whether the contract or any part of it went on the plant of the Cusack Company. That condition continued down to the formation of the G. O. A. I helped negotiate this contract introduced in evidence *ad* Plaintiff's Exhibit 221. At the time of its execution I was employed by the Bureau as general manager. I did not

(Testimony of Frank T. Hopkins)

testify that the Bureau did not do any soliciting. I testified that they made no sales and that the sales were all made by the agency members of the Bureau but I think I said that one of our very particular jobs was to help the agencies in the sale of outdoor advertising. The Bureau did solicit contracts but we did not solicit them from the advertiser. We solicited them for and with the agent.

I have testified that the advertiser or the agency had the privilege of designating the plants upon which the outdoor advertising should be executed. That condition existed both under the Cusack contract with the Bureau and the G. O. A. contract with the Bureau right straight through.

Friday, January 18, 1935.

The Bureau has never attempted to divert the business from one plant to another or to change an advertiser's or an agency's decision. The Bureau did not solicit the advertiser to place business directly with us. We came in contact with the advertiser frequently but in company with the agency. We have no solicitors in the ordinary sense or no sales department. Our representatives work in conjunction with our member agencies' solicitors in trying to induce the advertisers. I did not state and it is not a fact that all of the more important agencies or that substantially all of the agencies were members of the Bureau. We have about 200 members which includes a lot of the more important ones.

(Testimony of Frank T. Hopkins)

The Bureau collected and maintained information as to various outdoor advertising plants of the country. As part of the service which we gave our members without further cost, we would give information about any outdoor advertising situation in any particular town to any member agency inquiring for the information. We would also give the information to a non-Bureau agency, as a matter of courtesy. The Poster Advertising Association has compiled data of that kind for a good many years and they have allowed agencies or sources of business to subscribe to that service. The Bureau subscribed for the service and it was available to our members as part of our service. There was a charge for the service but I don't believe we ever paid as much as \$3,000 a year for the service. I believe the Association today furnishes any information they can get whether it refers to Association plants or not, but in the past and until very recently, I think it referred only to Association plants. An advertising agency becomes a member of the Bureau by reason of a stock option agreement. Without reading this entire paper over which you hand me, I think it is an exact copy of our option as it existed up to the time of the so-called Mack decree, the consent decree.

A typewritten copy of the document identified by the witness was thereupon received in evidence and marked Plaintiff's Exhibit 222 in evidence, and is in words and figures as follows:

(Testimony of Frank T. Hopkins)

[PLAINTIFF'S EXHIBIT No. 222.]

EXHIBIT "B"

OPTION TO PURCHASE STOCK OF NATIONAL
OUTDOOR ADVERTISING BUREAU, INC.

WHEREAS, THE NATIONAL ADVERTISING BUREAU, INC., hereinafter called the Bureau, is a corporation organized for the promotion of Outdoor Advertising; and

WHEREAS, the Bureau has a contract with General Outdoor Advertising Co., Inc., dated August 24, 1925, which is effective until notice of cancellation by either party be given and for five years from the close of the year in which such notice is given; and

WHEREAS, the Bureau has most advantageous facilities for the placing of outdoor advertising throughout the United States through the said contract with General Outdoor Advertising Co., Inc., and otherwise; and

WHEREAS, it is the policy of the Bureau to transact business only for those advertising agencies of approved standing, which have become qualified as members of the Bureau by payment of an initiation fee and by purchase of an option upon some amount of the Bureau's capital stock and otherwise complying with the Bureau's terms, and

WHEREAS, hereinafter called the grantee, desires so to qualify and become a member of the Bureau;

W, THEREFORE, GEORGE C. SHERMAN,
FREDERICK J. ROSS, AND WILLIAM D. Mc-

(Testimony of Frank T. Hopkins)

JUNKIN, who are trustees for the Bureau and those purchasing options upon the capital stock of the Bureau, hereby grant to the grantee an option to purchase at any time at and after the date of the expiration of said contract between the Bureau and General Outdoor Advertising Co., Inc., aforementioned, One share of said stock at the price of \$100 upon the following terms and conditions :

First. That the grantee shall, within fifteen days from the date hereof, pay to said trustees as the price of this option the sum of One hundred dollars and shall return to said trustees a duplicate hereof duly signed by the grantee.

Second. That, as the share covered by this option is subject to assessment by the Bureau during the life of this option to an amount not exceeding \$100 in any calendar year, the grantee agrees to pay to the Bureau the amount of any such assessment and/or assessments, if any, when and as the same may be made.

Third. During the life of this option, the trustees will, upon request from the grantee, give a stock proxy on the share hereby covered at any time and from time to time, and will pay or cause to be paid to the grantee all dividends which may be paid thereon, or a sum equivalent thereto.

Fourth. During the life of this option the grantee covenants and agrees that the Bureau shall be the grantee's sole agent for the placing of outdoor advertising and shall collect and receive for its services and expenses of every nature that percentage of the commis-

(Testimony of Frank T. Hopkins)

sions which may be paid on account of such advertising as is currently charged to all its other members.

Fifth. This option is personal to the grantee and is not transferable, nor can any rights or privileges under it, or of membership in the Bureau, be transferred.

Sixth. It is agreed that any breach of any of the

2.

terms hereof by the grantee or any act or conduct of the grantee which shall or may be prejudicial to the interests of the Bureau, may cause the suspension or expulsion of the grantee from membership in the Bureau and the forfeiture of all the rights and privileges of membership, as well as the forfeiture and cancellation of this option, and the forfeiture of the moneys paid therefor.

Seventh. If any complaint be made by the Bureau or any of its officers, agents, or members of any breach of the terms hereof or of any act or conduct prejudicial to it by the grantee, the trustees shall notify the grantee thereof, giving reasonable time and opportunity for the latter to reply. After hearing the complainant and the grantee and any evidence pertaining to the facts which may be offered the Trustees, it is hereby covenanted and agreed by the Bureau and the grantee that the Trustees shall act as arbitrators and, as such, shall determine the issues and define the penalty, both the Bureau and the grantee hereby agreeing to be bound by their decision.

Eighth. The Bureau consents to execution of this option upon the terms stated, will deliver a certificate of its capital stock to the trustees to be held by them against

(Testimony of Frank T. Hopkins)

said option upon receipt from them of payment therefor in the sum of \$100 and will, itself, be bound by such of the terms of this agreement as are pertinent to it.

IN WITNESS WHEREOF, the parties hereto have executed this instrument this day of _____, 192—.

NATIONAL OUTDOOR ADVERTISING BUREAU,
INC.,

By _____, President.

Agency _____,

By _____.

3.

No. 5673-C. Special Site vs. Foster & Kleiser Plf
Exhibit No. 222 in evid Filed 1/18 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

Q Now, I call your attention to the fourth paragraph of the agreement just read, making the Bureau the sole agent of the agencies in placing outdoor advertising. In the practical operation under that contract, that was exactly what you were, wasn't it; you were their sole agent placing the outdoor advertising developed by them?

A That is what we hoped to be. In practical operation it never worked that way.

Q Never worked that way; they broke over?

A Oh, yes.

(Testimony of Frank T. Hopkins)

Q Did you try any of them under that clause?

A Never.

Q Never tried any of them. Did you discipline any of them?

A Never.

Q Now, I believe you stated yesterday—and again let me be sure I get this right—that under this contract with the G. O. A., Exhibit 221, you assigned almost all of these contracts developed by your agencies to the G. O. A.?

A Yes, sir.

Q And then they placed the advertising on their plant or on other plants?

A Yes, sir.

Q And that was called for thereby. As a matter of fact, they placed it only on Association plants, didn't they, Mr. Hopkins, speaking now of all times prior to the Mack decree in 1929?

A Oh, I think they placed it on any plants that would accept it and upon which the advertiser wanted it, of course.

There was no arrangement or understanding of any kind by which the G. O. A. would not place business on any plant whether competitive or not. In the general operation of the placing of business at times up to the time when the General Outdoor Company was actually a soliciting force, any so-called independent plant operators ordinarily would not take business from the General Outdoor Advertising Company; in other words, it was a straight out and out competitive situation. We placed some business direct with other plants, and the General Outdoor Company placed with any of our plants wherever they could.

(Testimony of Frank T. Hopkins)

I cannot quote any specific instances where the G. O. A. placed any business on other than Association plants if Association plants were available. My best recollection is that they placed business on both. Under this arrangement and prior to the Mack decree, the General Outdoor Advertising Company cleared a very large percentage of all the national advertising in the United States. It may have been 80 per cent, but I would not state that the G. O. A. controlled 80 per cent of the national advertising in the United States.

Referring to paragraph 6 of Plaintiff's Exhibit 221, that being the paragraph wherein the G. O. A. agrees to refrain from the solicitation of any advertisers shown in Exhibit A attached to said contract and wherein the Bureau agrees to refrain from soliciting from the advertisers shown in the schedule marked Exhibit B and attached to said contract, it is a fact that prior to the execution of the contract the Bureau had been soliciting the accounts of all these advertisers. I said that we did not solicit accounts but only solicited agencies. That is true. Our agencies solicited any accounts that they thought they could get. As an organization, we did not solicit business direct from any advertiser at any time. This paragraph of the contract refers to the soliciting of the G. O. A. and of the Bureau. We were violently competitive. They were soliciting business direct from the advertisers and we were soliciting it from the agencies, and in the drawing of this we tried to protect ourselves as best we could so that we would have a fair opportunity to solicit through the agencies. At the time the contract was executed, we were supposed to stick to our list of accounts and the

(Testimony of Frank T. Hopkins)

G. O. A. were supposed to stick to theirs and there was to be no competitive solicitation between us, the G. O. A. and the agencies, as to the list of advertisers annexed to that contract and marked Exhibits A and B, but if you could see that list of advertisers after a year or two, you would know that there was a lot of competitive solicitation. Practically every one of them changed from one side to the other and neither side kept that portion of the contract.

REDIRECT EXAMINATION

BY MR. STERRY:

Q Mr. Hopkins, you said yesterday that during the time of your contract with the Thomas Cusack Company, when your Bureau sent out a contract for outdoor advertising, that that contract was assigned outright to the Thomas Cusack Company; if that is so, how could the agency or the advertiser direct the posting of its paper on a plant in territory where Cusack did not have a plant?

A We would specify in advance the plants on which the order was to be placed. That was a part of the contract.

At one time we got out a price rating data booklet for the use of our member agencies, and tried to give them complete information with respect to plants and towns in all parts of the country. This document is a copy of one of them. I think it is the last one we got out in that form. It is dated June 1, 1930. We have not issued a book of just that type since then because we have changed the method of sending out information. We sent this one out to all of our agencies. We have the plants and towns listed by states. This listing, of course, gives only the

(Testimony of Frank T. Hopkins)

names of showings and does not purport to be completely descriptive of plants. Among the independent plants listed in California, I see the Yonge-Elliott Company listed under Anaheim, Fullerton and Santa Ana with Foster & Kleiser. Orange shows the same two. San Diego shows Foster & Kleiser Company and the Robert Cordtz Company. In Oregon, under Portland, the C. E. Stevens Company is listed and Salem also has the Stevens Company listed there. The C. E. Stevens Company is also mentioned under Seattle, and in Spokane we have the Hayward-Larkin Company and the U. S. Sign Company. Under Tacoma, the C. E. Stevens Company and Foster & Kleiser are listed. This list only covers towns of 5,000 population and over and is not intended to be complete. The Special Site Sign Company is not listed there. There is no specific mention of any plant under Oakland. Where there were competitive plants we did not list the name of the plant. This booklet was merely to give a rough idea to the agencies of the cost of outdoor advertising in these cities and towns, for them to use for quick reference. Where there were two prices, that is, where there were competitive plants, we quoted both prices according to the best information we had. There was no other information in that book. We supplied other information on request from our members. The Special Site Sign Company was not shown or listed in Oakland because we had no information on which to list them. That is the only copy of the book that I could find and I would like to keep it as part of my records.

The booklet was thereupon marked Defendants' Exhibit ZZZ for Identification.

(Testimony of Frank T. Hopkins)

Witness continuing: We have placed some business with both so-called independent and Association plants without receiving any commission therefor. We have listed approximately 1800 non-Association plants in our rate pages. All of them are treated just exactly the same as the Association plants as far as we are concerned. The Poster Association has furnished information to non-Association plants only since Outdoor Advertising, Inc. was formed. Outdoor Advertising, Inc. is an association purely for the sale of the medium, of outdoor advertising. As I understand it and as my experience has been, it sells the medium without reference to particular plants at all. The words "approved agencies", as used in the option agreement, were those agencies whose credit and standing we had approved as being worthy of placing business for and worthy of risk. My recollection is that the word "approved", as used in that agreement, referred to our approval of the agency.

Q Now, may I ask you a question: The so-called G. O. A. decree has been admitted in evidence, and has not yet been read; it may or may not be, during the course of the trial; and it appears, I think sufficiently, that it was entered by consent of all the parties. I want to ask you this question: Did you before the institution of that suit offer to the government the consent to exactly that decree before any action was ever brought so far as it affects the Bureau?

A I certainly did, sir. We were anxious for the decree, and we negotiated the consent decree as it is there.

Witness continuing: The Bureau never handles any advertising detrimental to the medium, such as sniping,

(Testimony of Frank T. Hopkins)

target signs, rag signs, indiscriminate small signs, 4 by 6 signs, which are so-called targets. It is poor advertising for both the advertiser and for the medium.

There is certainly no way that I know of by which a valuation can be placed upon any so-called advertising lease because of the great number of indefinite things that must be taken into consideration, all of which are guess-work. In the first place, the lease is taken with the hope that you may sell advertising upon it and the lease in almost all cases is conditioned upon the sale or improvement or change in ownership of the property, and there are so many indefinite things in it that there is no way of figuring a definite value except by guess-work. I am not referring to a ground lease that an advertiser might take and use for advertising purposes, but am speaking of the ordinary advertising lease.

RECROSS EXAMINATION

BY MR. GLENSOR:

I said in response to one of Mr. Sterry's questions that I treated the independent and Association plants the same and made no distinction between Association and independent plants, so far as the Bureau is concerned. That is true at the present time and it has been true during the whole life of the Bureau, or my connection with it.

A small sign is objectionable because of the way small signs are usually handled and because it is not up to the standard that has been adopted by the Association or by other plants that operate in the regular type of displays even though they may not be Association members. I have seen boards which might be termed miniature de luxe bulletins. I think some of them are objectionable and

(Testimony of Frank T. Hopkins)

some are not. Mere size in itself does not determine whether a sign is objectionable. It is possible that a small sign can be just as attractive and just as well placed as a big one.

I have no idea how Foster & Kleiser figured the value of their locations or leaseholds. Assuming that they had 15,000 leaseholds which they valued at \$6,198,934, the average value of the individual leasehold would be about \$400.

Q Well, does that outrage your sense of values with respect to leaseholds?

A Well, my answer to the question, as I understood it, was in respect to a leasehold. I would certainly have some different answer as to a very large group of leases throughout a territory which might, because of their very number and distribution, constitute some value of some kind—certainly a large value—just on the same principle that a life insurance company can figure rather accurately on the prospect of life for a very large group of people, but they certainly can't figure on one.

Q Your opinion, if I understand you correctly, is that there is no known method of valuing a single leasehold, but if you have enough of them you can arrive at a value, is that so?

A Some intangible good will value.

This contract between the Bureau and the G. O. A., Plaintiff's Exhibit 221, is no longer in effect. We asked permission to cancel it and got permission through the Mack decree of May 7, 1929. We went to trial in that case and we tried it for a couple of weeks before we consented to the Mack decree. I do not know that we induced

(Testimony of Frank T. Hopkins)

our co-defendants to consent that the decree be entered. We tried very hard not to go to trial at all and, as far as we were concerned, there was no evidence of any kind presented by the Government in respect to unfair methods or anything of that kind. We finally consented to a decree which directed us to cancel this contract and it was cancelled at some later date set by the decree.

REDIRECT EXAMINATION

BY MR. STERRY:

When I stated on direct examination that as far as the Bureau was concerned, we offered the same thing to the Government before trial. Our offer included the cancellation of the contract between the G. O. A. and ourselves and the cancellation of any supposed agreement that we had with our agencies.

Q BY THE COURT: Was the consent of the Government necessary to the cancellation of this decree?

MR. GLENSOR: That contract, your Honor?

Q BY THE COURT: That contract? It was a private contract, wasn't it?

A But the consent of the Government was necessary in order to settle the questions at issue among all parties that were not willing to cancel the contract.

We were willing to cancel the contract before the suit was brought but we couldn't do it without five years' notice and we were afraid of the five years, that is, we were afraid we could not secure the consent of the party to it.

(Testimony of J. D. Chappell)

Thereupon

J. D. CHAPPELL

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I am employed by the National Outdoor Advertising Bureau and have been so employed for approximately eight years. I came out here in 1929 as Pacific Coast Manager of the Bureau and I hold that position now. The Pacific Coast office of the Bureau is in San Francisco. The Bureau opened its office on the Coast primarily to protect its interests and to secure business from our agency members who might place business with Foster & Kleiser and direct with other direct solicitors.

Q What difference would it make to the Bureau if your Pacific Coast members should place their business with Foster & Kleiser?

A Well, it would take the revenue away from the Bureau, from the support of the Bureau or the organization as a whole. It would not make it possible for us to maintain offices and facilities on the Coast except at considerable additional expense, for the benefit of our Coast members and for the benefit of rendering service on business emanating in the East.

Q All right. Then, as I understand it, your purpose in opening an office was, first, to obtain business for the Bureau; then, to render service to your members on the Pacific Coast and also be able to give full information about the Pacific Coast to your Chicago and New York offices?

(Testimony of J. D. Chappell)

A That is right.

Q Now, who designates the plants upon which the advertising display is to be made that is provided for in these contracts?

A The advertising agency.

Q Does the Bureau ever designate it?

A Never.

Q When I say "Bureau" remember I am limiting it purely to your office.

A Yes, sir.

We make up the contracts and our estimates attached to our contracts show the plants. If there are competitive plants in the towns that we have listed, both plants are shown together with the price. If a contract comes to us with a schedule attached, including a town where there are competitive plants, if no plant is specified for that town the contract is returned to the agency and we demand from them their choice of plants. We do not accept that responsibility. It makes no difference whatever to the Bureau whether the advertising is put upon a Foster & Kleiser plant or a competitive plant if we receive the usual 16-2/3 per cent gross commission from both the Association and non-Association plants. Since I have been here we have placed business upon various so-called competitive plants or independent plants as well as Foster & Kleiser. By far the greater bulk of business which has passed through our office has been placed on the plants of Foster & Kleiser. That is because the advertising agencies and the advertisers have an idea that they can get the best service from them and that the most facilities are provided by that company. As a matter of fact, however, one of the things that we are trying to sell some of our agency

(Testimony of J. D. Chappell)

members is that Foster & Kleiser need supervision as well as any other plant. The sales effort of Foster & Kleiser to them has been such that a good many of our own members feel that the Bureau is unnecessary and that all they would have to do is to put a contract with Foster & Kleiser. That is one of the reasons that we are in competition with them. In our office we have never made any effort to divert business either to or from an independent plant, or either to or from Foster & Kleiser.

Q Have you ever been accused of it by both Foster & Kleiser and the independents?

A Well, I don't know that we have been directly accused of it, but when one plant operator gets business and the other does not, why, they look at us and ask us, "How come?" and vice versa.

I am somewhat acquainted with the Special Site Sign Company plant in Oakland. In my opinion that plant has never had sufficient capacity to attract any great amount of so-called Pacific Coast national business, at least they didn't have the capacity at the time our field service department made a complete inspection. We have never listed Special Site and its facilities in making up our estimates. On one or two occasions, however, we have been requested to make a report regarding the facilities of the Special Site Sign Company. We have made such a report when we had those requests.

Q And have you ever had any experience of why you had a report from the Special Site Sign Company in response to your requests for their facilities, that inspections have shown were not correct?

A I don't get the question quite.

(Testimony of J. D. Chappell)

Q I say, have you ever had a statement from the Special Site or a report, whatever you call it, showing what they could offer, that on inspection of your field service has shown that they have not the facilities that they reported?

MR. GLENSOR: Now, just a minute, if your Honor please. I have not objected on the ground of hearsay up to now. I have let it all in. But now we are right down to a direct attack on a concrete question of fact of the plant and facilities of the Special Site Sign Company and on the accuracy of the reports that they have made. And I object to the question upon the ground that it calls for patent hearsay; and I insist that if this is to be proved, that it be proved by showing, first, what the report was that was made by the Special Site Sign Company; and then, that the report was false by the men who determined to their own knowledge that it was false, and not through hearsay reports that were made to this witness.

THE COURT: Objection sustained.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 227.

Witness continuing: On one occasion I have had correspondence with Mr. King with relation to his charging different prices for exactly the same proffered service to the different agencies. I wrote Mr. King the original of this letter dated January 18, 1933.

The letter referred to by the witness was thereupon received in evidence and marked Defendants' Exhibit AAA-6 in evidence, and is in words and figures as follows, to-wit:

(Testimony of J. D. Chappell)

[DEFENDANT'S EXHIBIT NO. AAA-6.]

January 16, 1933

Mr. Charles H. King
General Manager
Special Site Sign Co.
Oakland, California

Dear Mr. King:

We have just been informed that quite recently you have had occasion to negotiate with several independent plant operators in the interest of an advertising agency and in these negotiations you have asked the plant operators to accept posting on a selective basis regardless of the number of units to be purchased.

Inasmuch as you have requested that business be accepted on the basis that you suggest, we assume that the terms are quite satisfactory to you, although upon referring to your letter to us of January 17th the prices
us

quoted are considerably more than what we understand to be the basis of your negotiations in connection with the above matter.

Furthermore, you advise that the rates quoted to us are subject to 16-2/3% commission whereas the agency commission on the above proposition, we understand to be 20%.

(Testimony of J. D. Chappell)

Frankly, Mr. King, we cannot understand why you would be willing to accept a contract for posting on a selective basis regardless of the number of units purchased and give an agency with whom you plan to deal direct any advantage over business from an agency through the Bureau. Consequently, we hesitate to give the agency that has made the inquiry regarding your plant the rates which you have quoted to us knowing that you apparently are willing to accept business at a very much lower rate.

Please let us hear from you promptly about this so that we may know how to answer the inquiry which we have from one of our agency members.

2-Mr King

Jan. 18, 1933

There are a number of angles to this whole situation and it may be to your best interests as well as our own to discuss this situation with me at your earliest opportunity.

If you expect to be in San Francisco Thursday or Friday, I would appreciate your dropping in to see me.

Very truly yours,

JDC/mh

J. D. CHAPPELL
Pacific Coast Manager

No. 5673-C *Foster & Kleiser vs Special Site* Deft
Exhibit No. AAA-6 Filed 1/18 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of J. D. Chappell)

Said exhibit was thereupon read to the jury.

Witness continuing: After I wrote that letter, Mr. King called as I suggested, and I believe Mr. Westbrook was with him; I do not recall definitely. In that conversation, I don't know that I referred specifically to his giving different prices or commissions to different agencies. I myself had no interest in the commission that he paid or the rate that he charged. As I recall, I explained to Mr. King that it made no difference to us what rate he charged as long as he made the same rate to us that he made to others; and that was all. I just wanted to be sure that we were getting the same proposition that everyone else was getting. We never ask for any more but we expect as much.

When I first came to the Coast with Mr. Gilhofer we made a courtesy call on Mr. LaFon, and Mr. Stevens was present. Our conversation was general but, of course, in connection with outdoor advertising and the Bureau. Mr. Gilholter told Mr. LaFon and Mr. Stevens that the Bureau would always be glad to place business with them whenever their plant was specified.

Q Did he say anything as to whether the Bureau did or did not try to influence the plants to which business was to be placed?

A That point was not mentioned.

(Testimony of J. D. Chappell)

CROSS EXAMINATION

BY MR. GLENSOR:

Prior to coming out here I had worked for the Bureau in the East. The Bureau had never had an office out here until 1929. We opened the office here because just at that time we had to depend upon our own facilities for the actual placing of the business. Prior to that time we had placed our business through the General Outdoor, and before that through the Cusack Company. Their representatives more or less represented us. Our contract with the G. O. A. was cancelled pursuant to the consent decree and that changed the operation of our business. I would have no way of knowing what proportion of our Coast business has been placed on independent plants as distinguished from Association plants since 1929.

Q Well, how much that has cleared through your office has been placed on independents as compared to Association plants?

A All of the business that has been specified by the agency.

Q Well, usually how much has been specified by the agency?

A I wouldn't know that without referring to my records.

Q Mr. King and Mr. Westbrook called upon you several times, did they not, about the Special Site Sign Company's plant?

A I remember only one call from Mr. King.

Witness continuing: The list of locations given to us by a plant owner is called a location list. We received location lists from the Special Site only on one or two occasions when we requested them.

(Testimony of Harry R. Leonard)

REDIRECT EXAMINATION

BY MR. STERRY:

When advertisers have requested information of the Special Site Sign Company, we have in turn requested their locations, and whenever an agency has asked for an inspection of that plant, we have followed that request and have sent our report to the agency, together with whatever information or material has been given to us by the plant operator.

Thereupon

HARRY R. LEONARD

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I have been connected with Foster & Kleiser Company since October, 1923, when I entered their employ as a leaseman. In May, 1925, I became plant superintendent, which position I now hold. When I started work in 1925 there was considerable activity in the real estate market in Los Angeles and business was moving very rapidly at the time, so it was necessary to move from one location to another location, that is, we were losing locations and moving panels from one to another. In addition we were building new panels and increasing our plant. We continued to increase the size of our plant until the latter part

(Testimony of Guy S. Quigley)

of 1927. In 1925 we were moving two hundred panels a month, or about 5000 lineal feet of plant a month. From 1925 until 1927 the average would be about 75 panels a month that we were losing and changing locations, and 125 or more a month that we were building new.

When I was a leaseman in Los Angeles, I worked under Mr. Westbrook, but I never heard him say in substance or effect, during my attendance at leasemen's meetings, or elsewhere, that it was the policy of the company to break competitors' leases or to move competitors or to crush them in the shell, or anything to that effect at all.

Thereupon

GUY S. QUIGLEY

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I have been employed by Foster & Kleiser since December 22, 1922, and at the present time I am Chief Clerk of the Lease Department. I entered the employ of Foster & Kleiser as a leaseman and remained such until 1923, at which time I handled various work and correspondence coming in requesting takedowns, that is, letters requesting takedowns for the reason that the property had changed ownership, or the owner wanted to build.

I have heard Mr. Leonard's testimony as to the approximate number of locations that were being lost and new ones being built. My estimate would be approximately the same over approximately the period he gave.

(Testimony of Alvah H. Ross)

Thereupon

ALVAH W. ROSS

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I reside in the City of Los Angeles and am in the real estate business and have been since 1900. I have no connection whatever with Foster & Keliser Company and have no interest in the result or outcome of this lawsuit. I have been interested both as owner or agent in properties on Wilshire Boulevard, especially west of La Brea in the district known as the Miracle Mile. Either personally or through my assistant, Mr. Lawson, I leased a number of vacant pieces of property in that Miracle Mile to Foster & Kleiser for advertising space. I think there were two or three blocks of property. Before that, La Fon had been occupying these sites from month to month. I terminated his occupancy, I imagine somewhere around 1929 or 1930. Before doing that I had had a great deal of discussion with LaFon about the class of structures which I wanted on that property. I didn't think he had good enough signs for Wilshire Boulevard and I wanted him to put on de luxe signs but I could never get him to agree to do that. LaFon had rather mediocre signs on the property and we were trying to develop a high-class district and thought his signs were detrimental to the locality and the boulevard.

(Testimony of Alvah H. Ross)

Q What was the final cause of your terminating his occupancy?

A Well, we had been thinking about it for some time, but he put up a couple of boards there advertising Hollywood Boulevard as the fashion center of the world, or something to that effect; and that was our main competitor at that time. So the property owners out there greatly resented that, and bawled me out for permitting anyone to have signs there that would put up those kind of advertisements. So I immediately notified him to remove all his boards.

Q Before that had anybody but Foster & Kleiser contacted you at all for those locations?

A Nobody from Foster & Kleiser had ever talked to me.

Q And after you notified Mr. LaFon to take his boards down, did you direct anybody in your organization to contact Foster & Kleiser and see if they could make a lease of those?

A Yes, I had Mr. Lawson talk to them.

CROSS-EXAMINATION

BY MR. GLENSOR:

I had a few other locations on Wilshire besides the two or three blocks of which I spoke; they were between La Brea and the city limits.

Q I see. You knew, of course, that Foster & Kleiser had a great many advertising locations on Wilshire between La Brea and the city limits, did you not?

A They didn't have a great many.

(Testimony of Howard B. Lawson)

Q You know that, do you? You knew that they did not have a great many locations between La Brea and the city limits?

A Yes, sir.

I think we were getting probably \$50 or \$75 a month for a half block in the various locations. We probably got about double that from Foster & Kleiser.

Q Do you know how he knew that Foster & Kleiser were in the market for the property?

A Well, he didn't know they were in the market for the property. He had contacted Foster & Kleiser several months before that, trying to sell them on the idea of taking these locations, because we were dissatisfied with the boards that were there at the time, but he didn't have any success in making a deal or we would probably have put La Fon off of there before.

Q I see.

A Because we didn't like his boards.

Thereupon

HOWARD B. LAWSON

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I live in Los Angeles and am in the real estate business for myself under the name of Howard B. Lawson Company.

I have no connection with Foster & Kleiser Company and have no interest in the result or outcome of this law-

(Testimony of Howard B. Lawson)

suit. In 1928 and 1929 I was connected with the preceding witness, Mr. Ross, as a salesman. I negotiated with Foster & Kleiser for the renting of five pieces of property on Wilshire Boulevard.

One of the factors and one of the considerations in the deal with Foster & Kleiser was that the leases should contain a provision that the structures to be erected on these locations should be de luxe bulletins. We negotiated these deals on our own initiative. I solicited Foster & Kleiser. Mr. La Fon maintained poster panels on these locations and he had no landscaped boards at all. We were trying to develop that section known as the Miracle Mile, which was about the poorest section on the boulevard at the time. Everybody was knocking it and our greatest competition came from Hollywood. The Hollywood merchants advertised on our billboards and we resented that very much. Mr. Ross asked Mr. La Fon to take the advertising of the Hollywood Boulevard off the boards on Wilshire, and it was not taken off, and furthermore we thought that if we had some nice billboards like Foster & Kleiser had it would clean up the district and make it look much better. As a result I went to Foster & Kleiser. After negotiating for several months, we finally made a deal for an aggregate rental of \$800 a month for five locations.

I remember the incident of Mr. Ross' notifying Mr. La Fon to remove his boards, but I don't remember the date. Prior to that incident, no one from Foster & Kleiser had ever come to me in connection with the renting of those pieces.

(Testimony of William M. Culliton)

Thereupon

WILLIAM M. CULLITON

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I formerly worked for Foster & Kleiser Company, but I am no longer connected with them in any way. I own about \$200 worth of stock in that company. I worked for Foster & Kleiser Company from the latter part of 1926 until November, 1929 in the Seattle Branch.

I know C. E. Stevens of Seattle and have known him since about 1927. I know a man named Jack David, a director in the Stevens Company, and have known him since about 1924. I had a conversation with Mr. Stevens concerning the sale of the assets of the C. E. Stevens Company to Foster & Kleiser Company. I do not remember the exact language, but I do remember the substance of it. For some time prior to the summer of 1929 Mr. Stevens and Mr. David had been endeavoring to get me to invest a certain sum of money in the C. E. Stevens Company, in return for which I was to get a job, and so on. I finally told them that I was not interested in investing any money in their company, and Mr. David and Mr. Stevens, one afternoon in Mr. David's office, suggested that I negotiate a deal whereby the Foster & Kleiser Company would buy out the C. E. Stevens Company. I asked Mr. Stevens at that time why Mr. Stevens did not go to Mr. O'Neil, the general manager; and he

(Testimony of William M. Culliton)

said that he did not want to talk to Mr. O'Neil, and he told me that there would be a chance for me to make a commission by selling the C. E. Stevens Company to the Foster & Kleiser Company. So in August of this same year I had occasion to go to Arizona; before I left I had an interview with Mr. David and Mr. Stevens, and they suggested that I get hold of Mr. Lausen when I came down to San Francisco, and put the proposition up to him, and that if the Foster & Kleiser Company were interested in purchasing the plant, that Mr. Stevens would come immediately to San Francisco. So I came to Arizona by way of San Francisco around the 15th of August, 1929. At that time I stopped at Mr. Lausen's office and told him that the C. E. Stevens Company wanted to sell their plant to the Foster & Kleiser Company, and also told him of my conversation with Mr. Stevens, which I have already related. Mr. Lausen told me that Mr. Kleiser would be in Seattle in three or four weeks and suggested that I call Mr. Stevens and tell him that if he were interested in selling the plant to see Mr. Kleiser. I called Mr. Stevens from Mr. Lausen's office and told him that I was calling from Mr. Lausen's office and that Mr. Kleiser would be in Seattle in three or four weeks and that I would be back at that time, and that Mr. Lausen had suggested that Mr. Stevens see Mr. Kleiser if he wanted to sell his plant. As I recall, Mr. Stevens said all right, and that was all there was to it. I subsequently returned to Seattle before Mr. Kleiser reached there from the East. I don't recall definitely whether or not I told Mr. Stevens that Mr. Kleiser was in Seattle, but I imagine that I called Stevens and

(Testimony of William M. Culliton)

told him. Prior to the conversations with Stevens about the sale of the Stevens plant, I had had a number of conversations with Mr. David along the same line. Mr. David would always tell me he couldn't understand why Foster & Kleiser wouldn't buy out the C. E. Stevens Company. At one time, a good many years ago, Mr. David made the remark that the C. E. Stevens Company was formed for the purpose of irritating Foster & Kleiser Company to such an extent that Foster & Kleiser would finally buy out their property.

CROSS EXAMINATION

BY MR. GLENSOR:

When I was in the lease department of Foster & Kleiser I negotiated leases and I did not do anything else. I don't recall having a conversation with Mr. Stevens about certain alleged activities of mine in tearing down independent signs for Foster & Kleiser Company. I never discussed that with him at all and I never tore down any signs for Foster & Kleiser.

I don't recall whether Mr. David or Mr. Stevens suggested that I get hold of Mr. Lausen at that conversation in Mr. David's office. I believe I discussed with Mr. David the matter of the prospective sale once or twice prior to my discussing it with Stevens. I certainly did not discuss the sale of the C. E. Stevens plant with David at the request of any one connected with the Foster & Kleiser Company. It all came to me from Mr. David and Mr. Stevens. Those one or two conversations about the purchase of the plant prior to Stevens coming in were initiated more or less spontaneously by Mr. David and

Testimony of Edmund D. Young)

not by myself. In the conversation in Mr. David's office, Stevens and David made it clear to me that they wanted me to use my offices to get them together with Foster & Kleiser for a proposed sale of the Stevens plant. It was clear to me that Stevens wanted to sell.

Thereupon

EDMUND D. YOUNG

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I am employed by Foster & Kleiser Company as Assistant Manager of the Los Angeles Branch, and have held that position since January 1, 1924. I have worked for Foster & Kleiser Company since October 1, 1920, when I entered their employ in the San Francisco Branch. For a year and a half there in San Francisco I was Lease Manager of that Branch.

I know what the policies of the Foster & Kleiser Company with respect to leasing were while I was leaseman and lease manager at San Francisco. Generally and briefly, the policies were to lease all of the choice locations that we required for the operation of our business. It was not our policy to lease out locations from under competitors. While I was lease manager we had meetings of the staff of the lease department. They were informal discussions and we held them very seldom. Generally all of the leasemen were present at those discussions.

Testimony of Edmund D. Young)

Q Did you ever give the leasemen, either in any of those discussions or individually, Mr. Young, instructions or suggestions to the effect that they should lease all the property of every competitor or of any competitor?

A No, sir.

Q Did you ever give those leasemen either in those meetings or elsewhere, or individual instructions, to the effect that it was the policy of the company, or that they should, lease out locations from under competitors?

A I certainly did not.

Q Did you ever instruct or did you ever state to the leasemen at San Francisco or even at Los Angeles that the success with which they leased locations out from under competitors had a direct bearing on their advancement with the company?

A I certainly did not.

I recall that the Special Site Sign Company was in business around San Francisco Bay while I was lease manager at San Francisco. There may have been one or two instances when we came into competition with that company for advertising locations, but not in the city. The Special Site Sign Company had no locations in the City of San Francisco that I can remember. They had a small number of highway structures on highways adjacent to San Francisco. As an estimate, I would say they may have had ten structures in the territory I was responsible for.

The policy of Foster & Kleiser was to lease all locations that were available in the Triangle district because there was never a time when we could lease more than we could use. It was the district which was subsequently

Testimony of Edmund D. Young)

called the extra tight district, or part of the tight district, and which is now called the first traffic area.

I never had a conversation with Mr. Westbrook about membership in or a franchise in the Poster Advertising Association that I recall. I may possibly have made an attempt to explain to Mr. Westbrook what the membership or franchise in the Poster Advertising Association meant, but I couldn't have made a very clear explanation of it because I didn't understand it myself. I have no recollection of any such conversation with Mr. Westbrook but it is possible that I did.

When I became assistant branch manager of the Los Angeles branch on January 1, 1924, there was a very great demand for outdoor advertising locations. First of all, there had been a wide influx of people into Los Angeles, just about doubling its population, and I recall that the year before the building permits here were second to New York and had exceeded Chicago's. As a result of the influx of population and the building activities, it became necessary to remove large numbers of our structures. We were taking down approximately 7,000 feet of plant a month during the summer of 1923 to make way for building developments. In addition to that situation, our own business was on the upgrade and contracts for the display of outdoor advertising were coming in. To meet this situation, the general office had laid out a large building program which called for approximately doubling the plant in about 18 months. We had a real job on our hands to acquire the necessary amount of space. For purposes of efficiency we divided the city into about a dozen districts, and assigned a certain group

Testimony of Edmund D. Young)

of men to each district so that space might be acquired with least possible effort by confining the activities of the men to a limited portion of the city where they would become more familiar with the property and would become more acquainted with the real estate men operating in that territory. The districting of the city had no relation to competition.

When I came to Los Angeles, competitors of Foster & Kleiser Company in this vicinity were the De Luxe Advertising Company, the Highway Display Company and the N. B. Woodcock Company. Allen and Watt and Union Advertising Company were originally two companies which consolidated before I arrived in Los Angeles. They were not competitors of ours when I arrived because our company had made arrangements to acquire their business. When I arrived here we had just acquired them and I remember that there were some details of the transaction that had to be ironed out and the papers with reference to the transaction were signed about the 10th of March. After I arrived in Los Angeles and up to the time the papers were signed, there was no competition between Foster & Kleiser Company and Allen and Watt and Union Advertising Company. We owned the business.

When I came to Los Angeles I found the lease department was not operating efficiently. Accordingly we decided to get a new lease manager and I went to San Francisco and discussed the matter with Mr. Westbrook. I did not discuss the problem of competition with him at that time. I was thinking of getting space. I could not have discussed with him the danger that Allen and Watt and Union Advertising were about at the point of getting

Testimony of Edmund D. Young)

a national contract because we had acquired their business at the time I went to San Francisco to see Mr. Westbrook.

Q Did you ever say anything to Mr. Westbrook in this substance or to this effect: That there was danger that Allen and Watt and Union would get a national contract, and that would put them on their feet and send them off to a flying start?

A I couldn't have said anything like that.

Q Did you ever say anything of that kind to Mr. Westbrook about any competitor, actual or prospective competitor, of Foster & Kleiser Company?

A I don't recall that I ever said anything of that kind. And naturally, anybody that would get a national contract would not say they would be off to a flying start, but they would have something that would be desirable. I may have said something of that sort to Mr. Westbrook at some time.

I don't recall that any sites or locations occupied by the Special Site Sign Company were taken over by Foster & Kleiser during the time I was in San Francisco. I have no recollection of leasemen named Woolley and Davis or either of them ever coming into my office and reporting to me that they had been able to secure leases on property that the Special Site Sign Company was occupying. I did not tell Mr. Westbrook when I was discussing the matter of his coming to Los Angeles that Foster & Kleiser Company had seven or eight competitors in Los Angeles or that those competitors presented a problem, or anything to that effect. Mr. Westbrook came to Los Angeles on February 15, 1924. I don't know what instructions I gave

Testimony of Edmund D. Young)

him. I did not instruct Mr. Westbrook that he was to see to it that Foster & Kleiser Company leased all competitive locations in the downtown districts and on important thoroughfares in the Los Angeles Branch.

Q Well, was that the policy of the company? Has that ever been the policy of the company at any time since you have been with the company?

A Why, of course not.

Q Well, what has been the policy of the company since you have been with it with respect to locations in downtown districts?

A The policy has been to acquire all of the choice locations in the downtown district which were required for running our business; and usually that meant all of them, if they were available. There has never been a time when there were more locations than we needed in the heart of the downtown district.

Q Did you ever have any discussion with Mr. Westbrook in which you said, in substance or in effect, that one of the ways that Foster & Kleiser Company had to get information about its competitors was to discharge one of its own employees, have him get work or employment with a competitor, and then at a later period have Foster & Kleiser Company to reemploy him?

A Absolutely and positively no.

Q Did you say to Mr. Westbrook that the discharge of Craig, either in substance or in effect, did you say to him that the discharge of Craig would afford the company an opportunity to get information about its competitors?

A Why, certainly, I did not.

Testimony of Edmund D. Young)

Q Did you ever ask either Moritz or Craig for any information whatsoever concerning the plants of the competitors for whom they had been working during the period they were working for them?

A I certainly did not.

There is a department of Foster & Kleiser Company known as the Public Relations Department. There has been such a department in the Los Angeles branch ever since I have been connected with that branch. In a business such as ours where we are coming in direct contact with the public to a greater extent than any other line of business—we are sort of a semi-public utility, you might say—it becomes necessary for us to sell our business to public officials, to women's clubs or to anybody who might be in any way interested or could cause agitation adverse to our operations and our business. That is the function of the Public Relations Department; it is an educational program directed to city officials, women's clubs and others that we have to contact that don't know anything about our business. As far as I know, the Public Relations Department has no other function than that, except that it does interest itself in matters of legislation and ordinances that might affect the company or the outdoor advertising industry.

As far as I know and as far as I have ever been informed, the policies of the lease department of Foster &

(Testimony of J. D. Chappell)

Kleiser are to be found in the lease department manual. I never gave Mr. Westbrook any instructions that were not contained in the lease manual after the manual was issued. That provided our complete instructions and our operating procedure. There had been no occasion for me to give Westbrook such instructions. As a matter of ordinary daily routine, Mr. Westbrook would come into the office and we would discuss some of the locations that we were interested in and properties that we were trying to lease for our signs. I did not give Mr. Westbrook any instructions in discussing those individual properties which were not in the lease manual.

With the permission of the Court, the witness Young was thereupon withdrawn from the stand.

Thereupon

J. D. CHAPPELL

was recalled as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

The letter which I wrote to Mr. King, which is in evidence as Defendants' Exhibit AAA-6, was written in response to a letter from Mr. King. The reason for my letter to Mr. King was due to a copy of a letter that Mr. King had written to the U. S. Sign Company, another

(Testimony of J. D. Chappell)

independent plant operator under date of January 9, 1933, which the U. S. Sign Company had sent to me. Mr. King called on me in response to my letter, Defendants' Exhibit AAA-6. I asked him if he had written the letter to the U. S. Sign Company quoting different prices or lower prices than he had quoted to us on a previous occasion, and he said that he had. This copy of a letter to the U. S. Sign Company is the letter which I had and referred to in my letter which is in evidence as Defendants' Exhibit AAA-6.

MR. STERRY: I now offer in evidence this copy of a letter from Mr. King to the U. S. Sign Company dated January 9, 1933.

Witness continuing: I did not discuss this specific letter to the U. S. Sign Company with Mr. King although we discussed the subject *to* the letter. That was after I received this letter of January 9th. My discussion with Mr. King was the result of my letter to him on that subject, Defendants' Exhibit AAA-6. My testimony is that Mr. King and I did discuss the subject of the letter of January 9, 1933.

The letter of January 9, 1933 referred to by the witness was thereupon received in evidence and marked Defendants' Exhibit AAA-6½, and is in words and figures as follows, to-wit:

(Testimony of J. D. Chappell)

[DEFENDANT'S EXHIBIT NO. AAA-6½.]

Oakland, Calif.
January 9th- 1933

U. S. Sign Co.,
175 Post St., South,
Spokane, Wash.

Gentlemen:

Please send by Air Mail a list of your available 24-sheet posters and marked map to:

Mr. Frank Finneran,
Erwin Wasey & Co.,
507 Montgomery St.,
San Francisco, Calif.

This is the Advertising Agency handling the National Lead Co., account and they want to select posters for April 15th posting at the following prices:

\$18.00 per month, illuminated,
6.00 " " regular

The Agency expects 20% commission.

If the Independents can all give them what they want on this deal, it will, we are sure, lead to something bigger in the near future.

So kindly get in touch with Mr. Finneran by Air Mail at once and give him the list and marked map. We

(Testimony of J. D. Chappell)

dont expect anything out of this in the way of commission.

This is a good account and a big agency and although they may only select a few panels for a short period it will lead to a good account for the Independents.

Yours very truly,

SPECIAL SITE SIGN CO.,

By Charles H. King.

P. S. Submit all towns where you have panels available.

No. 5673-C. Special Site vs. Foster & Kleiser Deft
Exhibit No. AAA-6 $\frac{1}{2}$ Filed 1/22 1935 R. S. Zimmerman, Clerk By Cross Deputy Clerk

Said exhibit was thereupon read to the jury.

It was thereupon stipulated that the contract register of the Special Site Sign Company marked Plaintiff's Exhibit 121-A for Identification showed a contract between Special Site Sign Company and Erwin Wasey & Co., 333 Montgomery Street, San Francisco, for display of National Lead Company, Bass-Hueter Paints, that the terms of said contract were \$96 per month less 20 per cent to Agency, under the contract date 2-20-33, to run four months from March 15 to April 15, 1933; invoice to read May 1st, June 1st, August 15th, September 15th, October 1st, November 1st, 1933.

(Testimony of J. D. Chappell)

Q I want to ask you, as long as this subject has come up, does it make any difference to the agency at all in handling the account of Mr. King or the Special Site or any other plant what commission they charged, so long as it was the same to everyone?

A Well, we don't represent the particular agency involved here, so I can't answer that. If I may put it, our only interest in this matter was that we had previously been quoted a price that was entirely different than this; in other words, as I recall, we were quoted \$7.50 on regular panels and \$32.50 on illuminated panels, \$7 on unilluminated and the usual agency commission of 16-2/3. Well, naturally, we felt that we were being discriminated against when we found that some one else was being quoted a lower price than we, so naturally we thought it was our duty in the interests of our agency members to bring it to Mr. King's attention, not that we were interested in upsetting Mr. King's price, but whatever Mr. King quoted to someone else he should also quote to us.

Q And that was the subject of your conversation with him?

A That was the subject of the conversation.

CROSS EXAMINATION

BY MR. GLENSOR:

This whole transaction occurred in 1933. The established commission rate with all plant operators is 16-2/3 per cent. Wherever an plant operator pays a higher rate of commission, if that high rate is paid to us we retain the same proportion of the commission that we retain on

(Testimony of J. D. Chappell)

any business and the balance goes to the advertising agency. I don't recall any business that the Bureau had placed with the Special Site Sign Company prior to January, 1933. I don't recall that we have placed any business with the Special Site Sign Company since then. We were concerned about what Special Site Sign Company paid on commission or paid to another agency because we had received a request from one of our agency members who was interested in doing business with the Special Site Sign Company. That request came from the H. K. McCann Company in the interests of the Fuller Paint Company. The Fuller Paint Company, because of the fact that they got paint business from the independent plant operators, used the independent plants for the outdoor advertiser and it was in their interest that we made an inquiry. We also had a request from the Campbell Ewall Company about the plant of the Special Site Sign Company and we submitted all of the information and material that we secured from the Special Site Sign Company without comment. I would say that the inquiry about the Fuller Paint Company came to us about two or three months before I wrote this letter to Mr. King. I don't remember how long it had been since we had had the other inquiry. We did not make a recommendation that they put their business with the Special Site Sign Company; we do not make recommendations for any plant.

(Testimony of E. D. Young)

Thereupon

E. D. YOUNG

was recalled as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I never told Mr. Westbrook that he should keep independents so busy protecting their own locations that they could not sell their space. I never told him anything like that in substance or effect. It never was the policy of Foster & Kleiser Company to keep independents so busy with their locations that they could not sell their space. The policy of Foster & Kleiser Company was to make contacts on competitive locations to the end that we would keep them busy protecting their own locations and leave us alone. I never told Mr. Westbrook, either in substance or effect, that if Foster & Kleiser Company were not prepared to take care of the advertising business that some would go to a competitor and that therefore Foster & Kleiser Company would have to maintain intense leasing activity. It was obvious that if Foster & Kleiser Company could not take care of the business offered to it that it would go to a competitor. I know of no reason why Foster & Kleiser Company should not attempt to take care of the business offered. We would like to obtain all the business we possibly could by fair and legitimate means.

The operations and activities referred to in Account A were going on at the time Mr. Westbrook got down

(Testimony of E. D. Young)

here in 1924. Those activities were begun in January or February of 1924, just prior to Mr. Westbrook's arrival. The general nature of the Account A activities was the contacting of competitive locations by a man who had been assigned to that work. Shortly after I took over my duties as assistant manager here, Mr. Musaphia, who was then manager and had assumed his position at the same time that I assumed mine, instructed me to detach one of the leasemen from the company's payroll and instruct him to set himself up ostensibly as a real estate operator in an office removed from ours. The purpose of that was to keep it secret. The instructions were that this individual was to make contact on competitive locations for the purpose of dispossessing the competitor and breaking his advertising lease on the property. The man who was so detached was Clyde Meyer. He reported to me. After Westbrook got down here, I told him of these operations. The financial account of money expended in these operations was kept in what we termed Account A. It was a subdivision of our general expense account. It had no relation at all to the expense of the lease or space department and had no connection with that department. Mr. Westbrook being the manager of the lease department, I felt that he should have knowledge of everything pertaining to leasing activities and although this was not in accordance with Foster & Kleiser's policy or anything of that sort and although Meyer was working at an office removed from ours, I felt that I should not conceal anything from Mr. Westbrook and I explained to him in detail the operations. Mr. Westbrook never acted as a contact man for me between myself and Meyer.

(Testimony of E. D. Young)

I had a private phone installed in my office for the purpose of contacting Meyer so that it would not take me away from my duties. I felt that the whole thing was a ridiculous procedure and I did not want to devote any more time to it than I had to. Since the money was being drawn by myself and was being paid to me personally, I did not want to be in a position of not being able to explain where the funds went. Accordingly I called in our accountant and office manager, Llewellyn D. Wilson, and instructed him to keep an accounting record, that is where Account A came into being. As the money was required for these operations of Meyer's, I drew cash from our company funds and charged it to the general expense account 363. These operations lasted until some time in the late summer or early fall of 1924. Mr. Musaphia, the manager, authorized the institution of these activities and the taking of the steps which were taken. I was the assistant manager and he instructed me to put those activities into operation. As far as I know, the general office of Foster & Kleiser Company never knew anything about those operations while they were going on. The operations were stopped in the late summer or early fall of 1924 by Mr. Lausen, who came down here. That was about the time of the sale of the Neale Brothers' plant, known as the De Luxe Advertising Company, to Foster & Kleiser. Mr. Lausen came to Los Angeles and told Mr. Mysaphia and myself that we had exceeded our authority and that acts of that kind were contrary to all company policy, that the activities of Account A must be terminated and terminated at once and that we were never to indulge in them again.

(Testimony of E. D. Young)

Walter F. Stevens came to Los Angeles in the summer of 1924. To the best of my recollection, he did not have anything to do with the Clyde Meyer operations. I know positively that he was on the payroll of the company during the entire time he was here. He worked out of the Los Angeles office and maintained his headquarters at our office on Washington street. I did not tell Mr. Westbrook not to let Mr. Stevens come around the office and Stevens was there every day. I recall that Stevens left Los Angeles and went to Seattle as lease manager. I had a discussion with Mr. Haynes, our general lease manager, about that time, concerning a new lease manager for the Seattle branch. There were three men under consideration for that position, Mr. Stevens, Mr. Elwood Smith and Mr. Patch. All three of them later became lease managers. Mr. Smith is the present lease manager of the Los Angeles branch, having succeeded Mr. Westbrook, and Mr. Patch is lease manager at the Long Beach branch. I never had any discussion with Mr. Westbrook about the establishment here in Los Angeles of a school for the training of lease managers for other branches.

Account A was subsequently reopened some time in the early part of 1927. LaFon had gone back into business in Los Angeles in 1926. Mr. Musaphia called me in his office and told me in substance that he wanted the activities which I have termed here as Account A again instituted against the LaFon Company, and he asked me to assign Meyer to that work. I reminded Mr. Musaphia at the time of Mr. Lausen's instructions about that and he said, rather gruffly, that he was the manager of the branch and would take the responsibility. I left the office

(Testimony of E. D. Young)

and called Meyer in and told him what to do and the work was gone through with. The account was finally closed in September, 1927, after it had been in operation for approximately six months. It was opened the second time within a year after LaFon went back into business. I received reports of the Clyde Meyer activities during the second period of Account A. His reports were made in the same manner as they were in the first period and I turned them over to Wilson who kept the account. I would say that about \$15,000 was spent on the two phases of Account A. The circumstances under which the account was closed the second time were that Musaphia told me that one of the Neale boys who had formerly owned the De Luxe Advertising Company had called him on the phone and told him that Mr. LaFon had called him (Neale) up and wanted to know who Neale's attorney was and said that he (LaFon) had learned of these activities that I have described and that he was going to file suit against Foster & Kleiser. Upon receipt of that information from Neale, Musaphia went down to Gibson, Dunn & Crutcher's office in Los Angeles and laid the matter before them. When Musaphia told me that Neale had been in touch with him, he had already been down to Gibson, Dunn & Crutcher and he told me that he had been advised by them that it was a very dangerous thing that he was doing and that he should not be doing it. Musaphia was very indefinite and I don't think he got a very complete report. Musaphia and I talked the situation over and decided that the proper thing to do would be to go to San Francisco and lay the matter of a possible lawsuit before Mr. Lausen, the general manager. We

(Testimony of E. D. Young)

went to San Francisco around the 15th or 20th of September, 1927. Musaphia explained this phone call from Neale and the possibility of a suit and told Lausen that he had been down to Gibson, Dunn & Crutcher. Mr. Lausen inquired whether he had told them all about it and Musaphia said that as near as he could remember he had told them all. Mr. Lausen was pretty severe and told us that we had again exceeded our authority and that he was very surprised to find out that we had opened the account and reengaged in activities of that kind over his previous instructions to the contrary. Mr. Lausen told us to return to Los Angeles right away and go to the office of Gibson, Dunn & Crutcher and be sure to lay all of the details of the matter before them. Musaphia and I returned to Los Angeles and subsequently went to Gibson, Dunn & Crutcher's office. A stenographic record was made of the statements that were made at that visit by a court reporter. Mr. Sam Haskins and Mr. Elmer Conley represented Gibson, Dunn & Crutcher in the matter. In addition to those two, there were present Mr. Musaphia, Mr. Gilman Haynes, Mr. Elwood Smith, Mr. Clyde Meyer and myself. The activities of Account A were stopped when we were in San Francisco and before we came back to Los Angeles. I don't know when the account was actually closed as a matter of bookkeeping; it was about the time that that statement was made. I do not know accurately when the first phase of Account A was closed as a matter of bookkeeping; it was some time around the time we acquired the De Luxe Advertising Company and I think that was in October, 1924. I have read the statement that was made at the office of

(Testimony of E. D. Young)

Gibson, Dunn & Crutcher since it was made. That is the statement that is here in evidence marked Plaintiff's Exhibit 20-G.

When Mr. Lausen was down here the first time with respect to the first phase of Account A, Mr. Kleiser was not with him. As far as I know, Mr. Kleiser was not in the state. I know he was not here when the deal was concluded of taking over the business of the De Luxe Advertising Company.

Q Well, has Account A ever been opened since 1927, Mr. Young?

A No, sir, it has not.

Q Have any such activities ever been indulged in since that time?

A I'll say they have not.

I have seen Foster & Kleiser's office bulletin No. 74 but I don't remember when I saw it for the first time. I was in San Francisco at the date the bulletin was issued and I probably saw it there. I have also seen Foster & Kleiser's bulletin No. 242 but I don't recall when I first saw it. I have been assistant branch manager here in Los Angeles since January 1, 1924, and prior to that time I was lease manager in San Francisco. I was lease manager at the date of bulletin No. 74.

Q Has it ever been the policy of the company to take competitors' locations, whether the company needed them or not?

A No, sir.

Q Has there ever been a time since you first became connected with the company, when the company had more

(Testimony of E. D. Young)

locations than it could use in the so-called extra tight district of the communities in which it operated?

A Yes, sir, during the depression but at no other time.

Q Was it ever the policy of the company to invade or cause a breach of a lease, of a competitor's lease on an advertising location?

A No, sir.

Q Was it the policy of the company to take locations occupied by the competitors in any circumstances or under any conditions?

A No, sir.

If the rights of the competitor had terminated, the policy of the company would depend entirely upon whether or not we needed that location and upon the character of the location from the outdoor advertising standpoint. If the competitor's rights had terminated and the location was a desirable one and one that would fit into our scheme of operations, if it was a location that we needed in the running of our business and the lease conditions were right, we would take it. Leases for advertising sites are the raw materials of the outdoor advertising industry. There wouldn't be any business such as this without these locations.

Q Well, what was the policy of the company with respect to outdoor advertising locations here in the branch and elsewhere, so far as you know—what kind was it trying to get?

A To secure at all times the choicest locations which were available, for the maintenance of our structures.

(Testimony of E. D. Young)

Q That has been the policy of the company and is now, isn't it?

A Always has been during the time I have been connected with the company.

The Class C leases referred to in bulletin No. 242 is a lease with a term of less than one year. We have, and had in 1924, four classes of leases, A, B, C, and D. The Class D lease is where we have verbal permission from a property owner to occupy his premises; there is no written agreement or understanding. Bulletin No. 242 taken in entirety represents the policy of the company with reference to leasing. At no time since I have been assistant branch manager at Los Angeles or during the time I was leaseman and lease manager at San Francisco did the policy of the company differ from the policy as stated in that bulletin as a whole.

Basing my statement upon my experience with the company, I would state that it has been necessary for Foster & Kleiser Company to have a reserve of unbuilt space at all times; that is a necessary part of running the business. From my experience, I find that losses of locations are always due to the use of property which we are occupying for some other purpose than advertising, such as a building or a business development or an auto park or a used car lot or an oil station or any one of many things. We have lost locations to competitors but by far the greatest cause of our losses are due to the causes which I mentioned other than the loss to competitors.

Q So far as competitors have been concerned, has it been necessary for you to keep a reserve of unbuilt space?

A Why, yes.

(Testimony of E. D. Young)

For every \$100 which Foster & Kleiser Company has spent for its built plant, it has spent \$22 for reserve in the Los Angeles branch. That is the average for a six-year period when business was normal, that is, the period from 1925 to 1930 inclusive. I would say, as an estimate, that we have 70 per cent as many leases now in the Los Angeles branch as we had in 1928. The footage that we have now as compared with what we had in 1928 is about the same, approximately 70 per cent as much. That has reduced the unbuilt space. It is my experience that the necessity for built space and the necessity for unbuilt space go together. If we carried no unbuilt space and lost locations in showings and had to go out and get locations to replace the lost ones, the result would be that our rents on individual locations would cost us considerably more. That tendency would be accentuated if competitors were in the field and we lost the location and had no unbuilt space; that is very obvious.

CROSS EXAMINATION

BY MR. GLENSOR:

Mr. Musaphia, prior to leaving the company as branch manager, wrote a great many reports regarding the operation of his business. If he ever wrote any special letters regarding competition I didn't know of it. The "competitive reports" mentioned in the branch managers' reports are a part of our general statement that goes to the home office each month; that is a part of the general statement and we keep it. We have office memoranda with respect to competitive locations but there is no reason for cluttering up our files with that sort of thing and we destroyed them, in accordance with the policy which I

(Testimony of E. D. Young)

have just stated. I couldn't state positively whether I, as lease manager in San Francisco, ever had any of my men endeavor to lease any sites on which there were competitors' structures. As a matter of general procedure I did not. I would not say that a few locations occupied by competitors were not contacted. During the entire time which I have been with Foster & Kleiser Company, the policy was to lease all choice locations that we required to properly conduct our business. We never leased any locations that we did not need. It was never our policy to jump a competitor's lease but if a competitor was on a location that was desirable and one which we needed and could use in the operation of our business and if his lease had expired or terminated, or for some other reason the property owner was willing to enter into an arrangement with us, we have made a lease on the property.

Mr. Roy McNeill never discussed with me the company policy with respect to leasing competitors' properties for the simple reason that we had no competition to speak of in San Francisco at any time that I was there.

I learned the policy on competitive leasing after I came to Los Angeles through our office bulletins and through the lease department manual. I am not as familiar with that manual as I should be, but I am familiar with it. I wouldn't say that I learned much of the policy from Mr. Musaphia here in Los Angeles. We still have a complete file of office bulletins in our office here in Los Angeles. I presume I saw bulletin No. 74 when it came out in November, 1922 and I presume I read it all. That was while I was in San Francisco. I paid no attention to it

(Testimony of E. D. Young)

at all. It was not a matter that I was concerned with in San Francisco. It did become a matter of some concern to me when I came to Los Angeles but it was not called especially to my attention when I got down here. I had the bulletin in mind because it calls for making out a report to the general office on competition, known in those days as Sheet 9, which afterwards became Sheet 15. It is the inventory of competitive plants. I gave the leasemen in Los Angeles no instructions as to what they were to do when they contacted competitors' lessors. Our policy was known to the lease manager and the leasemen. It is hard for me to say where they got the policy from but they presumably and undoubtedly got it from the bulletin.

Q Then the only information that these leasemen had, no matter how it was transmitted to them, the only statement of policy as to what to do when they contacted these competitors' lessors was embodied in the bulletin?

A Well, I do not doubt at all but what I might have talked over the substance of this bulletin with Mr. Westbrook and interpreted it. I may have done it, and he in turn passed on these instructions.

I don't know of any written information containing a statement of our company's policy that was in effect in 1924 other than bulletins No. 74 and No. 242. There may have been other bulletins but I don't know of any. I don't recall that I have ever seen another one.

Q Now, you note in there the statement in your Bulletin 74, to start with, that it is the company's policy to take competitive locations, whether they need them or not.

A That is the way this reads, yes.

(Testimony of E. D. Young)

Q And you say, as I understood you, that that never was the company's policy?

A Not the way you put it to me.

Q Oh, it isn't the way I put it. It is the way the bulletin puts it, Mr. Young. "We must do everything within our power to secure all competitive locations, whether we can use or need such locations or not." And that never was your company's policy?

A Well, I would say that, properly understood, that represented the policy of the company.

I can't show you any written statement that would indicate that that statement in the bulletin which you have just read means anything different than what it says. I can't tell you of any instruction that was given to me by any of my superiors in Foster & Kleiser that was contrary to or in conflict with that statement in the bulletin but that statement doesn't mean whether we could ever use or ever need a location. It obviously does not mean that and couldn't mean that. If we acquired a piece of property, whether it had formerly been used by a competitor or whether it was a vacant piece of property, and we put that in our reserve, there is nobody who can say whether we would ever have need for it at the time we make the lease. We wouldn't make a lease on any piece of property whether occupied by a competitor or whether it was vacant if we did not feel that we had a reasonable need for it and if we did not feel at some time we were going to need it. As I interpret that language in the bulletin, it means that some time in the future there is a possibility that the company might need that competitive location. If an outdoor advertiser has to move and keep

(Testimony of E. D. Young)

moving his location, it puts him to the expense of moving boards but I wouldn't say it is a disturbing influence on his business. That is a matter of routine procedure in the outdoor advertising business and we move locations constantly. I don't agree that the moving of locations has a disturbing effect upon the advertisers. It is a part of our job to have a sufficient supply of locations so that we can replace a plant as we lost it and not disrupt or disturb the relationship with the advertiser. For instance, in Los Angeles a showing of posters consists of 117 panels and that is what the advertiser contracts for usually for a period of thirty days. In the normal course of our operations, in that thirty-day period we are liable to lose one, two, three, four, five or six of these locations. We have to have a sufficient reserve plant properly distributed all over the territory in which we operate so that if we lose an advertiser's locations today, we can replace it on another location without disrupting the service, so I don't see where losing locations has any disrupting effect upon the advertiser. In my opinion, the moving of competitors off the location would have no particular influence upon the competitors and would not hurt them at all except by putting them to the expense of moving their boards and getting another location. I would say that it would not disturb their relations with their advertisers.

Q Now, let us pass on to this next clause in this bulletin. "The only way to protect our investment in this business is to make competitors move and keep moving." Now, first, let me ask you: At any time after you entered the service of this company did they call your attention to

(Testimony of E. D. Young)

any particular protection which their investment needed in the business?

A Why, of course.

Q What protection did they say they needed in their business?

A What protection do we need? Obviously, we have to protect the investment you have in your structures and your sites.

Q Sure. Will you tell us now what that portion of the bulletin, properly interpreted, and you put an interpretation on it, means when it says the only way we can protect our investment in this business is to make competitors move and keep moving?

A Why, certainly I can tell you. The only way we can protect our investment is to endeavor to keep competitors from disturbing our locations. And how did we do it? By going out and contacting the locations. They started in by going after ours and made it pretty nasty for us, and in order to protect our investment, to protect the locations which we had built and developed, we found it necessary to go out and contact theirs to keep them busy.

Q I see.

A And that is gospel truth.

That is what that particular clause means and it doesn't mean anything else. The statement in Bulletin No. 242, "You should make contact as often as you deem advisable but at least every four months on locations that are occupied by competitors in your tight district. We must secure all such locations whether we have need for them or not." means just the same thing as the similar

(Testimony of E. D. Young)

statement contained in Bulletin No. 74. That is my own interpretation of that statement. The clause in Bulletin No. 242, "The only way to protect our investment in this business outside of sales effort is to make competitors move frequently. We would have comparatively few worries if we could keep them outside our tight districts" means just the same as it did in Bulletin No. 74. The tight and extra tight district in Los Angeles includes not only the heart of the City but extends out for quite some distance on heavily travelled arteries. You can't conduct the bill-posting business successfully unless you have locations in the tight district if you are offering a city-wide service. Our showings are all built with a certain amount of distribution in that tight district. To me, the statement, "We would have comparatively few worries if we could keep them outside our tight districts" is a perfectly obvious statement. Of course, we would have fewer worries if we could keep competitors out of the tight district and we would also have fewer worries if we could do all the outdoor advertising business that is to be done.

Q Sure. And, coupled with the statement that you must make competitors move frequently and that you would have fewer worries if you could keep them out of your tight district, that means what to you?

A Just as I have explained, it means that we would have fewer worries if we could keep them out of our tight district.

Q Isn't this the fact: That paint, being sold in selective showings or selective units, and posting being sold in showings, displays which must have distribution

(Testimony of E. D. Young)

in the tight district, that if you can keep all competitors out of your tight district they can't go into the posting business?

A I would say this, Mr. Glensor: That it would be utterly ridiculous to attempt to keep competitors out of the tight district; and the reason that it is utterly ridiculous to keep competitors out of the tight district is the simple fact that there are thousands of unsecured locations in the tight district available for anybody that wants to go out and lease them and use them. I might illustrate that by saying this: That in this tight district—that bulletin is written in 1924. Now, between 1924 and now, we have probably leased, ourselves, 10,000 locations,—10,000 panels in this very territory that we are talking about, the tight district. Why do we lease 10,000 panels in the tight district? To take care of the plant which we lost. Our total plant up to 1930 before the depression was only slightly larger than it was when that bulletin was written in 1924. Now, mark, that while we maintain the same amount of plant in that tight district, comparatively speaking,—the difference is about 6 per cent—while we maintain the same amount of plant, we found it necessary, due to the development of properties, to buildings going in and oil stations going in, and a thousand others things, which took our locations from us—we found it necessary to replace, roughly, 10,000 panels. I would say this: That if it were practical or possible to keep your competitors out of the tight district, why, sure, then you would have all the business.

Q That is exactly what I was going to ask you, Mr. Young. Ridiculous or not, that is what you were trying to do, isn't it?

(Testimony of E. D. Young)

A No, we weren't trying to do anything that was foolhardy to start with.

Q You were not trying to keep them out of the tight district?

A Why, of course not.

Q If you did, it would mean that no competitor could go into the bill-posting business, at least, wouldn't it?

A That is right.

I have stated that the activities in the under-cover department were not known to the general office in San Francisco until the Neale Brothers brought it to their attention. I never made detailed reports of those activities to Mr. Musaphia and I never made a written report at any time. To my knowledge, Mr. Musaphia did not make detailed reports to San Francisco on these activities. I wrote part of the branch manager's letters from the Los Angeles branch and Mr. Musaphia wrote part of them. The Neale Brothers company, the De Luxe Advertising Company, was taken over in October, 1924 or thereabouts and it was a short time before they were taken over that the Neale Brothers went to San Francisco and complained to Mr. Lausen that we had been doing some unethical things through this under-cover department. Then Mr. Lausen came to Los Angeles and the activities were terminated and he told us never to do it again. I am quite sure that prior to that time no one in the San Francisco office had ever known what we were doing here under Account A. The Los Angeles branch manager's letter dated September 22, 1924, marked Plaintiff's Exhibit 22-G, was probably written partly by Musaphia and partly by myself. I

(Testimony of E. D. Young)

would say that I probably wrote the comments here and the summary was prepared by the accounting department. I would think that this statement in the letter, "The increases in our establishment expense are represented chiefly by activities in Account A." was the first reference to Account A that had ever been made to the San Francisco office in any report or letter; to the best of my recollection, it was. I don't know of any explanatory matter or anything that went up to San Francisco which would show them what Account A was or what it represented or what it covered; I am pretty sure that none went up. I just said that the increase in establishment expense was represented by Account A without any explanation of what the account was or what it was for. Mr. Lausen had knowledge of it at the date of that letter. We bought the De Luxe Advertising business in October, 1924 or thereabouts and it was some time prior to that that the Neales went up to San Francisco and talked to Mr. Lausen about it and Mr. Lausen had been down here and talked to us before that letter was written. The statement in the letter of October, 1924, "The outstanding feature of establishment expense decrease was that of \$1,576, due principally to decreased activities of Account A." required no comment for the same reason because they knew all about it by that time. After the Neale brothers had been up to San Francisco and when Mr. Lausen came down to Los Angeles, he told Musaphia and myself that we had exceeded our authority and had violated the company's policy and that we were never to indulge in practices of this kind again.

(Testimony of E. D. Young)

Mr. Haynes was present at the time this statement, Plaintiff's Exhibit 20-G, was made, together with myself and Mr. Musaphia, Meyer, Conley, Smith and Haskins. I read the statement once since it was made and I glanced at it within the last month. Mr. Lausen told us to be sure and make an accurate statement to Gibson, Dunn & Crutcher of what had occurred and Musaphia and I came back here with the intention of seeing that such a statement was made. I personally felt quite a degree of responsibility in the matter. I had exceeded my authority and I was a little uneasy about it. I haven't read plaintiff's Exhibit 20-G for a long time. I was present when Mr. Musaphia said, as reported in that statement, "I want to say right there, that at the time, at the time the De Luxe was taken over, we were instructed by Mr. Lausen and Mr. Kleiser, to be very careful about any such operations in the future as they felt they were very dangerous and felt that at the time we took the De Luxe over, that those fellows had a very good case against our company." I would say that that statement was incorrect. I did not speak up and correct it, but Mr. Kleiser never told me anything. As I remember it, Mr. Kleiser was not here. I think he was in the East when that business was acquired.

Naturally I didn't undertake to correct the statement at that time. We were not down there for that. I was not down there to argue with my boss. We were instructed to go down there and recite in detail the acts that had been committed. I probably noticed that he was in error in making that statement, but it was a matter of inconsequential importance.

(Testimony of E. D. Young)

I am positive that Mr. Haynes was not present when Mr. Lausen gave those instructions about closing the account. As I remember it, Walter Stevens never worked in the under-cover department; that is my best recollection. I might add that I understand that he said he worked in it but I don't recall it.

I rather summarized my testimony about the public relations department by stating that it was an educational program. This close contact with public officials was not always entirely educational we had business to transact. The work that we did with some of the public officials like the Department of Public Works here in Los Angeles was quite important. We never had any arrangement whereby we got advance information on our competitors when they secured permits to erect structures; we didn't need it. The most important thing about which we were concerned which related to the public officials was to watch and guard against adverse legislation; that is where our educational policy and educational efforts come in because very often you can have adverse legislation due to misinformation on the part of somebody that promotes that legislation.

Q You used to spend quite a bit of money, didn't you, in keeping your relations with the City Hall right?

A Not that I know of.

Q. In your branch manager's report for February 25, 1925, I find this entry: "Miscellaneous sales department expense increased in connection with various Christmas remembrances to our theatrical advertisers and influential City Hall connections." Now, you used to take care of them at Christmas, didn't you?

(Testimony of E. D. Young)

A Why, we have made minor gifts, yes, a box of cigars or something of that sort.

It is not a fact that we had accounts at several of the large stores here which we used in taking care of these City Hall connections in our educational program. We had an account at Alexander & Oviatt's but it was not for that purpose.

Account B was Musaphia's personal expense account. There were items charged into that account all right but I don't know where they went. Musaphia had the spending of the money in that account.

I was assistant branch manager here in 1924. We were not at that time or at any other time trying to keep competitive companies from obtaining a foothold in our tight or extra tight district. At that time we were very busy occupied getting our own properties. We were not interested at all in preventing competitors from securing a foothold in the tight district.

Q Well, I want to show you the Los Angeles branch manager's report for October, 1924.

"Space rental increased during the month to the amount of \$183.00. There was, however, an increase of \$584.00 in unbuilt space rent. This increase is covered by two locations at El Monte and Pasambra, northeast and northwest, at a rental of \$500.00 and \$900.00, respectively, which were transferred to this branch from the Restop Realty Company. They also secured eight other leases, for which it was necessary to make a high rental occasioned by the efforts we are concentrating upon our extra tight district. Our policy in this respect has been to segregate from our tight district twelve main arteries,

(Testimony of E. D. Young)

which are now know as our extra tight district. By concentrating on this extra tight district we feel that the tight district as a whole will be greatly benefitted, and by using the money to secure leases on these twelve main arteries which would otherwise have to be expended in securing leases over a large area, we are thus making it increasingly difficult for any opposition to secure a foothold in those parts of the city which would be of importance to them."

Now, does that refresh your memory as to what you were trying to do in October, 1924, about your position in the extra tight district?

A Yes, sir.

Q And what were you trying to do, keep them out or let them get in?

A Just what it says here. We were naturally interested in the extra tight district, first of all, Mr. Glensor, because there was a limited amount of space there. Now, competition by paying for that space, as we were, and that was our raw material against the future, against our future needs, so certainly we did the obvious thing and concentrated on those few streets. We knew we would have use for it and we did have use for every location that we acquired.

Q Thus making it increasingly difficult for the opposition to secure a foothold, that was a mere incident?

A It probably had that effect, yes.

(Testimony of E. D. Young)

REDIRECT EXAMINATION

BY MR. CLARK:

With respect to my testimony about the company's policy being to keep competitors out of the tight district, I of course knew that when Foster & Kleiser Company got a location anywhere that the inevitable result would be that our competitor could not get it. That did not prevent us from bidding on a location that we needed in the business. I knew that if we attempted to lease desirable locations in the extra tight district or anywhere else that if we leased them our competitor could not lease them at the same time.

Q Then, did you or did you not lease them for the purpose of preventing the competitor from getting them or for some other purpose?

A For the purpose of operating our own business.

Q Although the necessary result was that the competitor could not get them; you knew that, didn't you?

A Yes, sir.

If we had not leased them, in time the competitors would have had all our business. All my testimony since I have been on the stand is according to my own recollection and not somebody else's.

I did not interpret Bulletin No. 74 to say, nor did I understand it to mean, that Foster & Kleiser was to take all competitors' locations whether they needed those locations or not at any time whatsoever. I understood that bulletin to mean that we were to take competitors' locations if we needed them whether we needed them at the particular time that we leased them. I know that neither

(Testimony of Frank L. Allen)

the language of Bulletin No. 74 nor Bulletin No. 242 was carried into the lease manual.

MR. GLENSOR: Mr. Clark calls my attention to the fact that there is some distinction between branch managers' letters and branch managers' reports. I really don't know what it is.

MR. CLARK: The branch manager's report, as I understand it, states the financial data as it is sent forward; the branch manager's letter, as shown here, is the branch manager's explanation of what is shown in his financial report.

Wednesday, January 23, 1935.

Thereupon

FRANK L. ALLEN

was called and sworn as a witness on behalf of the defendants and testified as follows:

DIRECT EXAMINATION

BY MR. STERRY:

I have no connection whatsoever with Foster & Kleiser Company, and do not own any stock, or bonds, or securities, or indebtedness to it. In the fall and winter of 1929 and the spring of 1930 I resided in Los Angeles. I am acquainted with Mr. LaFon who was president of the LaFon System, Inc. I remember the sale of the LaFon plant to the Restop Realty Company some time in March or April of 1930. As I recall, in the latter part of December, 1929, Mr. LaFon called me and asked me

(Testimony of Frank L. Allen)

to discuss with him an important matter pertaining to his business. I met him and he told me that Foster & Kleiser had erected advertising structures on streets on which there were supposed to be no structures of that kind. He listed 15 or 20 such instances and asked me to take the matter up with Kent Parrott. After discussing the matter with Mr. Parrott, Mr. Parrott said the ordinances seemed to be very old and were very technical and that he didn't know what he could do about it. I then reported that conversation to Mr. LaFon and talked at some length and said: "Frank, are you so dumb that you can't see that I want to sell my business?" So I proceeded to endeavor to sell his business for him, and the most likely prospect that I could think of was Foster & Kleiser Company.

I contacted Mr. McNeill of Foster & Kleiser Company; Mr. Parrott arranged the appointment with me. I had considerable negotiations on the matter through Mr. Elmo Conley, of the office of Gibson, Dunn & Crutcher. From the first time I saw Mr. McNeill until the last interview with Mr. Conley, about two weeks before the papers were finally signed, I carried on the negotiations entirely for LaFon. We asked about \$300,000 for the LaFon plant at first. In discussing the terms of the deal with Mr. McNeill, Mr. McNeill never discussed it in any light except as to the value of the assets they had to offer.

CROSS EXAMINATION

BY MR. GLENSOR:

Nothing was said about a sale of the LaFon plant at my first interview with Mr. LaFon. The subject was opened up at the second interview when he told me that

(Testimony of Frank L. Allen)

he wanted the money and wanted to get out. He was particularly vindictive against the Foster & Kleiser Company. I don't recall that Mr. LaFon ever said, "Frank, they have gotten me to my knees," or "beaten me to my knees." Mr. LaFon told me that his company had been subjected to considerable pressure which had brought him into a condition where he wanted to sell his plant. He told me that they were large competitors and they hurt his business like any large competitor would. All the negotiations which I participated in were conducted with McNeill and Mr. Conley of Gibson, Dunn & Crutcher. Mr. Conley only entered into it toward the last. I did not know anything about the Restop Realty Company until I saw the preliminary papers up in Mr. Conley's office. A letter was written in which LaFon stated that he had not been subjected to any unfair competition. This document which you hand to me, Plaintiff's Exhibit 21-A-3, appears to be the letter which I described a moment ago to the general effect that LaFon was making a voluntary sale. I personally had not charged Foster & Kleiser Company with unfair practices or any oppression of LaFon and I don't believe that Mr. LaFon in my presence had made any charges of that nature during these negotiations. The letter was brought out and presented by someone representing Foster & Kleiser, who said they wanted it. I don't recall what was said by the representatives of Foster & Kleiser when they brought this letter up and said they wanted this letter. So far as I know it was a spontaneous desire on the part of some one on the other side of the deal to get such a statement in writing from Mr. LaFon.

(Testimony of Gilman B. Haynes)

REDIRECT EXAMINATION

BY MR. STERRY:

If I remember, I think I called Mr. LaFon about several things while we were in this conference and I think this letter, Plaintiff's Exhibit 21-A-3, was one of the matters that I called him about and talked with him about. Mr. Conley presented the letter and I don't remember the exact reason he gave, and then I think I called Mr. LaFon and asked him whether he had any objection to signing it. He said he had no objection and that is all I remember about it. It is entirely possible that when Mr. Conley presented the letter he made some statement as to why he wanted it but I have forgotten now what his reasons were. I don't remember now what he said.

Thereupon

GILMAN B. HAYNES

was called and sworn as a witness on behalf of the defendants, and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

I am now employed by Foster & Kleiser Company as Lease Manager, and have been in the employ of the company continuously since 1915, except for the war period.

Prior to the time that I was made Lease Manager, Foster & Kleiser Company had no one in general charge of leasing matters. My first experience in obtaining leases

(Testimony of Gilman B. Haynes)

for outdoor advertising was shortly after I entered the employ of Foster & Kleiser Company.

Two men named Ellert and Stevenson had worked for the J. Charles Green Company as salesmen and when Foster & Kleiser Company acquired the assets of Green they started out in business and immediately took away about 30 or 40 of Foster & Kleiser's best locations in San Francisco on which we had structures. When this happened I, together with all the other salesmen, was instructed to go out and get written leases covering our built locations in San Francisco, to cover locations on which Foster & Kleiser Company actually had structures at that time. Prior to that time Foster & Kleiser Company had no leases but merely had advertising permits. Plenty of our leases were held on mere oral permits.

In 1919 when I went over Foster & Kleiser's leases in San Francisco, I found that over 50% of their leases were poor leases, that is, Class "C" or Class "D" leases. A Class "C" lease is a lease whose term is for one year, or from year to year, and a Class "D" lease is a lease that is less than a year, or a mere verbal permission.

The leasing records of the J. Charles Green Company when Foster & Kleiser Company took them over in 1915 were very poor. There was no system for determining when rent was due or when leases would expire, and no system for determining which were canceled and which were uncanceled leases. In addition, the property descriptions in the leases were very poor at that time. We now describe the property by legal description.

In 1919 or 1920 I made a trip to Los Angeles and surveyed the leasing situation there, and found a situa-

(Testimony of Gilman B. Haynes)

tion similar to what I found in San Francisco. I also found a very acute competitive situation existing in Los Angeles, because Erskine and La Fon were very active. They were bothering us on our locations upon which we had structures and taking away locations that we had, and things were very acute. They were also securing unbuilt locations that we had need for here, and I came down to develop ways and means of protecting our investment in this business.

The first step that I took with respect to the system was to install a rental system, that is, our rental card and a lease envelope. I did that because our leases were in very bad shape, and we were being attacked by competitors and we wanted to get our records in shape where we would have some rights on the property. If the record of the rentals was not in good shape, some of the rentals would not be paid and the competitors would get our locations away from us.

I went over the lease situation with our attorney and we worked out a set of twelve different forms of leases to cover the properties that we were operating on, which would make us more secure against competition and, in fact, against anybody getting leases away from us. I also organized an index system and a system of arranging the rental cards so that the rental dates could be found properly.

(Testimony of Gilman B. Haynes)

I installed our so-called office record card system in 1921.

In the early days I did considerable work in auditing of leases. That consists of periodically taking every lease out of every file in every branch and examining it to see if that particular lease covered the particular location it was supposed to cover. In auditing leases we would grade them into Class "A", "B", "C" and "D", "A" being the best type of lease we could get.

In our office record card system we had a corresponding field card for each office record card and in order to facilitate matters with the leaseholders we had different classifications of cards. The cards for these different classifications had different colors.

Up to 1925, I made a survey of leases for the years 1920, 1921, 1922, 1923 and 1924 to find out the leasing conditions existing in the various branches. I put this in the form of a written report which was sent out as office bulletin No. 329, which bears my signature. The graph attached to the bulletin is the graph referred to in the report or a copy of it.

The office bulletin and the graph referred to by the witness were thereupon received in evidence and marked Defendants' Exhibit AAA-10 in evidence, and read into the record. A true and correct copy of said Defendants' Exhibit AAA-10 in evidence follows:

(Testimony of Gilman B. Haynes)

[DEFENDANT'S EXHIBIT No. AAA-10.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 329

San Francisco, Calif.,
May 11, 1925

Foster and Kleiser Company

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Geo. A. Sample	San Diego
Mr. Lyle Abrahamson	Tacoma
Mr. W. C. Brown	Long Beach
Mr. W. H. Funk	Sacramento
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

Gentlemen:— Subject: Chart No. 1, Comparative Record of Leases and Contacts

We are enclosing under separate cover Chart #1, Comparative Record of Leases and Contacts, which shows graphically the number, condition and development of leases and contacts and the relative standing of the

(Testimony of Gilman B. Haynes)

branches. as shown by lease audits taken at various times from 1920 to 1925. In the audits taken prior to the second half of 1924 it is almost impossible to make a direct comparison for similar periods between branches. However, the development within the individual branch is clearly shown.

In order to establish a basis for comparison, the audits of San Francisco, Los Angeles, Seattle, Portland and Tacoma, taken during 1920 and 1921, were grouped and this combined total gives us a fairly accurate picture of the condition of leases at the earliest period of record. In the first graph of the combined totals it will be seen that of a total of 7068 leases 2501 were Class "C" and "D" leases. In other words, $35\frac{2}{10}\%$ of all our leases were for a period of one year or "no lease." No record of contacts for this period was available since the present contact system had not been installed.

In the second graph has been shown the combined totals of the audits taken during 1922 and 1923 (San Diego and Fresno not included). In the time which elapsed between the first period and the second period 4700 leases were added, making a total of 11768 leases, of which 3538 were Class "C" and "D" leases, an increase of 1037 poor leases, the major portion of which was due to the acquisition of the Sacramento, Long Beach and Medford branches. Although the percentage of "C" and "D" leases to the whole decreased from $35\frac{2}{10}\%$ to 30% , undoubtedly there would have been a greater decrease if it had not been for the fact that $71\frac{7}{10}\%$ of all contacts that were necessary to be performed were delinquent.

(Testimony of Gilman B. Haynes)

Bulletin No. 329 - 5/11/25

Page 2

All branches are included in the last graph, which is the combined total of the audits taken during the fiscal year 1924 and 1925. In the time which elapsed between the second and third (last) periods 7217 leases were added, making a total of 18985 leases, of which 3013 were "C" and "D" leases. In the face of this remarkable increase in the total volume of leases the actual number of poor leases was reduced from 3538 to 3013. The percent of "C" and "D" leases to the whole decreased from 30% to 15-8/10% and at the same time the per cent of delinquent contacts decreased from 71-7/10% to 9-8/10%

You will note that the Long Beach branch shows the lowest percentage of "C" and "D" leases, 12-4/10% of their leases being poor.

Experience has taught us that whenever consistent and intelligent contacts are performed there is always an improvement in the status of poor leases and the graphs clearly illustrate this fact, although the last audits of the Oakland and Seattle branches apparently show that this is not exactly true, these exceptions are readily explained as follows:

In the second half of the year 1924-1925 when the General Lease Department was taking an audit of leases, the Oakland branch acquired the posting plants in a number of towns operated by Retzloff, and few, if any, good leases were obtained, with the result that their "C" and "D" leases were abnormally increased at a time when it was entirely beyond their control to remedy the situation. As a matter of fact, their "C" and "D" leases would have shown a decrease over the previous audit, just as

(Testimony of Gilman B. Haynes)

their delinquent contacts did, if it had not been for this instance.

In the case of Seattle in the first half of 1924-1925 the graphs show a decrease in the percentage of "C" and "D" leases and an increase in delinquent contacts. However, the actual decrease in "C" and "D" leases took place almost immediately following the audit of the first half of 1922 and 1923 and was the result of intensive contact effort at that particular time and for this reason the last graph is not true to form.

This chart shows our rapid growth in leaseholds during the last five years. At present we have $2\frac{1}{2}$ times more than we had in 1920 and our per cent of "C" and "D" leases has decreased from $35\frac{2}{10}\%$ to $15\frac{8}{10}\%$, which shows that progress is being made in the right direction.

If the results obtained in the past year are an indication of what we may expect in the coming year, we see no reason why our poor leases should not be fewer in number than at any time in the history of our organization and feel you will agree with us that the proper performance of contacts and strict adherence to contact schedule will accomplish it.

Yours very truly,

FOSTER AND KLEISER COMPANY

G B Haynes.

G. B. Haynes,

Manager Lease Department

GBH:IM

(Testimony of Gilman B. Haynes)

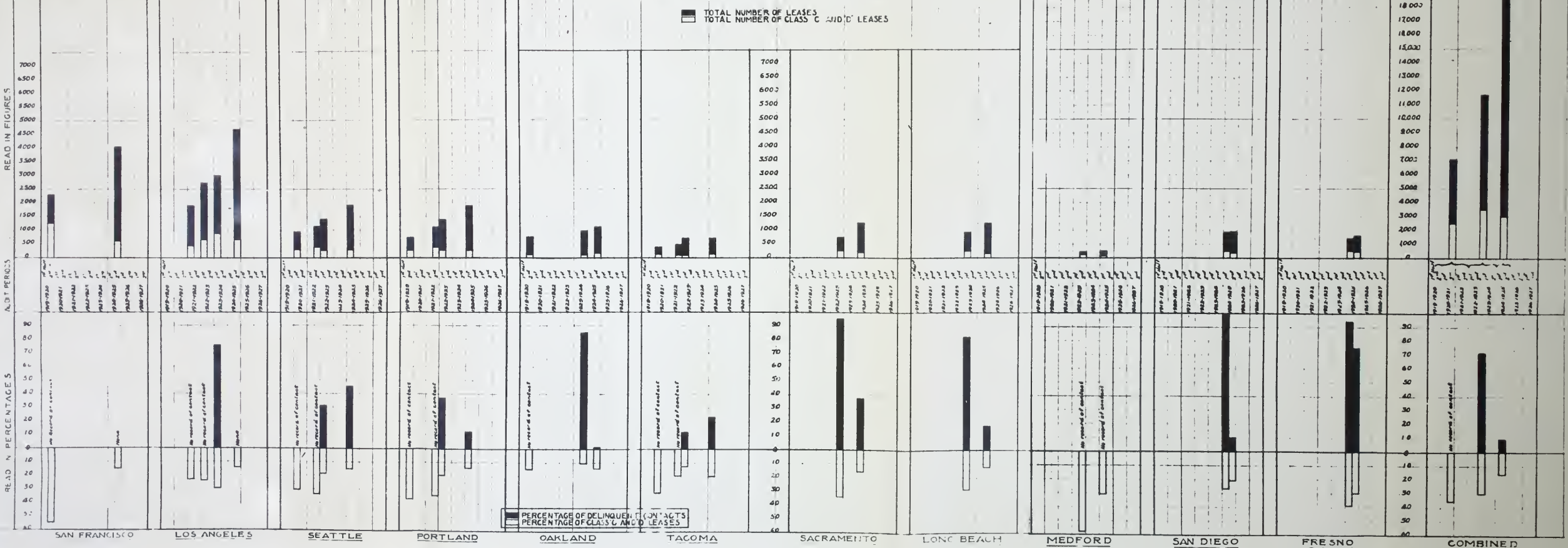
(Graph)

No. 5673-C. Special Site vs. Foster & Kleiser Deft
Exhibit No. AAA-10 in evid Filed 1/23 1935 R. S.
Zimmerman, Clerk By Cross Deputy Clerk

Witness continuing: Chart No. 1 referred to in that bulletin is the graph attached to it. According to that bulletin, we had a total of 7,068 leases in all the branches for the years 1920 and 1921. The words "no lease" which are shown in quotation marks in the bulletin refer to the same kind of a lease that I have heretofore referred to as a Class D lease. I know that since 1915 Foster & Kleiser Company have from time to time acquired over 90 plants in the Pacific Coast area. It has been a part of my duty to set up a proper leasing system in each one of these acquired plants. Each of these plants which were so acquired had practically no system at all of keeping track of its leases. In that sentence in the bulletin, "71.7% of all contacts that were necessary to be performed were delinquent.", the word "contact" refers to interviewing lessors or property owners. The fiscal year of Foster & Kleiser Company starts April 1st of each year and runs for 12 months. Whenever the word "poor" is used in that bulletin in connection with leases, it means either a Class C or a Class D lease. The Retzloff plant referred to in that bulletin is located around Hayward, south of Oakland.

I am familiar with Foster & Kleiser's office bulletin No. 74; I wrote it. I don't recall now whether I had any conversation with my superiors about the writing of that bulletin before it was issued but I undoubtedly did have a conversation with either Mr. Lausen or Mr. Klei-

CHART 4 COMPARATIVE RECORD OF LEASES AND CONTACTS



(Testimony of Gilman B. Haynes)

ser, or both of them. At the time I wrote that bulletin I had in mind the experience I had had with Ellert & Stevenson in San Francisco and the condition I had found in Los Angeles with respect to Erskine and LaFon, and the loss of locations. I have examined this bulletin, together with Mr. Clark. The purpose in issuing bulletin No. 74 was to have an inventory of competitive plants and to lay out a contact schedule of contacting these locations. The inventory requirements of the bulletin are contained in the first eight paragraphs of it.

The blue office record card and the blue field card were put into our lease record system pursuant to the instructions contained in Bulletin No. 74. The large blue card which you show me is the leasemen's card and the smaller one is the office record card. According to our system, the information to be recorded on all office record cards regardless of color is the location and description of the property, the owner's name and address and the agent, if any. If a contact was made the date would be put down. By contact I mean that if the leaseman saw the owner or agent of the property and had an interview with him, he made an entry on the field card first. The field card was the one that the field man carried around with him. The blue field men's cards were assigned to the leasemen. First they were updated in the system whenever they were supposed to come up for attention and they were then given to the lease manager and he assigned them to the various leasemen or delegated the job of assigning them to some subordinate. That applied to all field men's cards regardless of color. The leasemen would do whatever was necessary and make an entry on the card in long hand. He would then turn the card into the office

(Testimony of Gilman B. Haynes)

when he got through and it was up dated again. It would then be collected by the office record clerk and whatever the leaseman had written on the field card would be copied on the typewriter on the office record card. In other words, the office record card was an exact copy of the field card. The leasemen's field card is not a permanent record and it never has been a permanent record of the Foster & Kleiser Company. The office record card is a permanent record, with some exceptions. For example, the color of the office record cards on competitive locations was changed. When the color of the office record cards on competitive locations was changed back to buff, I directed the branches to transfer any information on the blue card that was of any importance at all to the buff office record card. If there was nothing of any importance on the blue card, they were just destroyed. As far as I know, these blue office record cards have all been destroyed. I haven't seen any for a long time.

Bulletin No. 74 provided for an inventory of competitive plants. That inventory was a list of information or data about the physical plant of the competitor of Foster & Kleiser Company. That inventory was sent to San Francisco on special sheets. In those days the sheet was called Sheet 9 which is provided for by Bulletin No. 74. Sheet 9 is substantially the same as Sheet 15. Sheet 9 did not contain a description of the competitor's property but Sheet 15 does. In all other respects the two sheets are the same. Bulletin 74 also provides for a system of contacts. The purpose of prescribing these contacts was to find out all we could about a competitive location, that is, a location that was occupied by a competitor's structure. The main purpose in getting information about a

(Testimony of Gilman B. Haynes)

competitor's location was because we wanted to know what the going rate of rentals was. It is very important to know how much rent your competitor is paying. You can't run your business correctly without knowing it. For example, supposing we have a lease on a piece of property for a period of five years at a rental of \$20 a year and supposing that during the term of that lease competitors have come into the field, the appearance of the competitor would naturally make your rate of rental go up. It might have forced the rental on this particular property to go up to \$40. If we wanted to renew our lease at the expiration of its term and went to see an owner and offered him \$20, the amount we were originally paying, we would not get our renewal. The information concerning the rate of rental that a competitor was paying for his locations was intended to be available for the branches. As lease manager I did not control the rate of rental being paid by the branches, that is and has always been finally and lastly controlled by the branch manager. We also wanted information about competitor's locations because we wanted to know the size of his plant. That information was necessary from a sales angle. If a salesman is contacting a certain advertiser and attempting to sell him a certain contract and a competitor is also trying to get a contract from the same advertiser, the salesman naturally knows what the advertiser's needs are. If the advertiser, for example, is going to buy de luxe bulletins and the competitor does not have any, it is a mighty nice thing to know that the competitor won't get very far with that advertising because he has not got the service, and so our salesman wants to know exactly what the competitor has to offer. In the event of necessity, the salesman wants

(Testimony of Gilman B. Haynes)

to be able to compare Foster & Kleiser's goods with the goods of the competitor, and he wants to know what the competitor has to offer as against what Foster & Kleiser Company have to offer.

Another reason for promulgating this contact system was that we wanted to know what form of lease this competitor was using because in this business an owner will put us against a competitor; that is to say, he will tell us that the competitor offers him so much and try to force us up in our offer. We like to know and see a competitor's lease to see if the owner is actually getting what he says he is from the competitor. Another thing is that we like to know what amount of money the competitor is paying. I hardly know of a case where the competitors don't pay a whole lot more money than we do. That is the natural thing where a competitor enters into a town or community in which we are operating; it forces the rental up.

Another reason for laying out that schedule of contacts was that we wanted to know the term of a competitor's lease so that if we had need for the location, we would know the proper time when it would be terminated and we could make an offer. We also, in that connection, wanted to know the rental that the competitor had been paying or we couldn't make a sensible offer.

We have changed our form of leases from time to time and strengthened them. It was almost a continuous operation. I wrote this office bulletin No. 367 dated October 13, 1925 and sent it to all the branches. The bulletin referred to by the witness was thereupon received in evidence and marked Defendants' Exhibit AAA-11 in evidence and read into the record. Said Defendants' Exhibit AAA-11 is in words and figures as follows, to-wit:

(Testimony of Gilman B. Haynes)

[DEFENDANT'S EXHIBIT No. AAA-11.]

[Crest]

Foster and Kleiser
' COMPANY

OFFICE BULLETIN
#367

San Francisco, Calif., October 13, 1925

Foster and Kleiser Company,

Mr. D. R. McNeill, Jr.	San Francisco
Mr. Georges Musaphia	Los Angeles
Mr. G. E. O'Neil	Seattle
Mr. H. P. Dueber	Portland
Mr. Grant M. Smith	Oakland
Mr. Geo. A. Sample	San Diego
Mr. Lyle Abrahamson	Tacoma
Mr. W. C. Brown	Long Beach
Mr. W. H. Funk	Sacramento
Mr. P. H. Pande'	Fresno
Mr. M. D. Cole	Medford

Gentlemen: RE: LEASE FORM A-1

This bulletin cancels and replaces Office Bulletin #244 under date of July 8, 1924.

The A-1 lease form should be used in the leasing of all surface properties (including highways) when such properties are to be used for advertising purposes only, as this

(Testimony of Gilman B. Haynes)

lease can be terminated, only, by the erection of a permanent building.

The advantages of the A-1 form to the Foster and Kleiser Company are of major importance and since experience has proven that this type of lease is acceptable to property owners, this lease must be used to secure all surface and highway locations. (The use of lease forms B & C is to be discontinued and these forms will not be reprinted when the present stock is exhausted.)

When a location, which was leased on the old B form, was sold, any of the following things were apt to occur, the location was liable to be lost to competition or subjected to competitive bidding or the new owner might have arbitrarily demanded an unfair increase in rental. Locations secured on A-1 forms are practically immune from all the above disadvantages, since the new owner is bound to observe this agreement which was in effect prior to his ownership.

In short the A-1 form is an effective defensive weapon against competition and places us in an advantageous position to secure a renewal from the new owner at a fair and correct rental. It further tends to reduce the cost of securing renewals by giving us ample time to complete a satisfactory transaction without having to work under forced pressure, in order to quickly protect our investment.

(Testimony of Gilman B. Haynes)

[Crest]
Foster and Kleiser
COMPANY

OFFICE BULLETIN
#367

Page 2 San Francisco, Calif., October 13, 1925

Notwithstanding the fact that an A-1 form is noncancellable in the event of sale, our policy will be to secure a renewal from the new owner. It is only natural that he will more willingly abide by an agreement to which he is a party and it is advisable from the standpoint of good will to secure a renewal.

The A-1 lease affords us the maximum protection unless we wish to go to the expense of securing a ground lease that is non-cancellable for any reason and results show that when the A-1 form is properly explained that property owners do not offer any serious objection to it, since after all there are practically only two things an owner can do with his property, sell or improve it, and there is nothing in this lease that prevents him from doing either. Unimproved property with an assured income, no matter how small, is certainly desirable from a prospective buyer's viewpoint and the fact that our structures, in practically all cases remain on the property after sale is proof enough that the revenue is a factor and the structures are acceptable.

(Testimony of Gilman B. Haynes)

POSITIVELY UNDER NO CIRCUMSTANCES SHOULD A FOR SALE CLAUSE OR THE WORDS "OR SOLD" BE INSERTED IN AN A-1 FORM LEASE. If in an EXCEPTIONAL CASE an owner will not sign a lease without a for sale clause and WE HAVE MADE EVERY EFFORT to obtain an unscratched lease, then attach the following clause to the form as a rider:

"In the event said property is sold, then the Lessor may terminate this lease by giving the Lessee written notice that such sale has been consummated, returning with such notice all rent paid for the unexpired term of this lease; thereupon the Lessee shall remove said signs and structures within thirty days after receipt of such notice."

The foregoing should be thoroughly explained to every leaseman with explicit instructions that the use of the rider is not to become general practice.

Kindly acknowledge the receipt of this bulletin.

Very truly yours,

FOSTER AND KLEISER COMPANY

G B Haynes

G. B. Haynes

GBH/EB

General Lease Manager

No. 5673-C. Special Site vs. Foster & Kleiser Deft
Exhibit No. AAA-11 Filed 1/23 1935 R. S. Zimmerman,
Clerk By Cross Deputy Clerk

(Testimony of Gilman B. Haynes)

Witness continuing: The unscratched lease referred to in that bulletin means a lease that is amended in handwriting. You can take a good A-1 form and amend it in such a way that it amounts to what we call a Class D lease or no lease.

The contact system provided for in Bulletin No. 74 graduates from a period of a 60-day contact to a 120-day contact depending upon the area, that is, whether it is on the outside, on the highway, or whether it is close in on heavily travelled streets of the city. Foster & Kleiser Company, as a matter of policy, was contacting the owners of locations which they had under lease also; that has been the system and practice throughout my time as lease manager after I got the system installed. We contacted our own lessors for the purpose of improving our position. I am familiar with the leasing policy of Foster & Kleiser Company with respect to so-called non-competitive properties as well as the policy with respect to competitive properties. I would say that there is no difference in the policy of Foster & Kleiser Company with respect to competitive and non-competitive properties. With respect to leases, that policy is to put under lease property that we have use for under the best terms and the lowest rate of rent possible, whether the property is competitive or non-competitive. It has never been the policy of Foster & Kleiser Company to lease property that it never had any use or need for. The policy of the company with respect to the time of leasing as compared with the time of needing property has been that we work in advance on leasing property to take care of our future needs. I have had experience with waiting

(Testimony of Gilman B. Haynes)

too long to get unbuilt space to meet the needs of the company. If you wait too long it costs you a lot more money, not only in rental but in the expense of securing the properties that we need. It has been my experience that if a competitor is not operating in a certain territory we are working in, we can contact an owner and take our time about it and we get our raw product which is the location at the lowest possible rental figure. The minute a competitor comes into the field, you have got to quicken up your activities and the more time that the competitor has and the longer you have competition, the higher your rental goes. It just keeps climbing and climbing. It has been the policy of Foster & Kleiser Company to lease properties that they deemed desirable for outdoor advertising purposes at a time when they could get them at reasonable figures or what they considered to be reasonable figures. As far as I know Foster & Kleiser Company has never leased any property that it never had any use for.

My purpose in writing that part of Bulletin No. 74 beginning with the sentence, "We must do everything within our power to secure all competitive locations, whether we can use or need such locations or not.", was to get the property ahead of them on the best deal we could because if we tied the property up sooner instead of waiting we would get the locations at a decent figure. I knew, of course, that if Foster & Kleiser Company got a piece of property under a good lease that was non-cancelable and couldn't be broken, that a competitor couldn't get it.

(Testimony of Gilman B. Haynes)

It was not my purpose to instruct the leasemen, of Foster & Kleiser Company, to take all competitors' locations, whether Foster & Kleiser Company needed them or not. The purpose that I had in mind when I wrote this bulletin was that even if we didn't have need for it right at that moment, that is the minute we got the property, we still wanted the property because we would have some future use for it. We might not need it for a month or maybe two months or six months or a year or two years. I was instructing them to lay up a reserve.

I know that a reserve of locations is necessary in the outdoor advertising business, at least in Foster & Kleiser's outdoor advertising business.

I subsequently wrote office bulletin No. 209 which modified bulletin No. 74. Bulletin No. 209 changed the competitive report and called it sheet 15 in place of sheet 9. Bulletin No. 209 also lessened the territory in which we were contacting competitive locations. Under Bulletin No. 74 we took in every place and in Bulletin No. 209 it limited the contacts on competitive locations to the tight district and the close-in highways. The close-in highways and the tight district is the area that carries the greatest circulation.

Bulletin No. 209 was thereupon received in evidence and marked Defendants' Exhibit AAA-12 in evidence and a portion thereof read into the record. Said Defendants' Exhibit AAA-12 is in words and figures as follows, to-wit:

2480

(Testimony of Gilman B. Haynes)

[DEFENDANT'S EXHIBIT No. AAA-12.]

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN
No. 209

San Francisco, Cal.,
March 27th, 1924.

Foster and Kleiser Company,
San Francisco
Los Angeles
Seattle
Portland
Oakland
San Diego
Long Beach
Tacoma
Sacramento
Fresno
Medford

Gentlemen:— Re: Sheets #13, #14, and #15 of the
new General Monthly Report.

New general monthly report sheets that are to be used
in making up the Inventory of Space Rentals, Leases
(Secured and Cancelled) Contact Record and Inventory

(Testimony of Gilman B. Haynes)

of Competitive Plants Reports will be forwarded to you by our Mr. Zamloch. Sample of same we have enclosed.

The Inventory of Space Rental Sheet No. 13 (formerly Sheet No. 8 as per our Office Bulletin No. 72) is the same as heretofore except the following:

All non-standard bulletin classifications are eliminated. Such footage, units, rental etc. of these classifications are now combined and carried as one with the standard figures of the same particular classification.

8 sheets and 16 sheets are eliminated. Such footage, units, rentals etc. of these classifications are now combined and carried as one with illuminated and unilluminated posting as the case may be.

Square footage is also eliminated in this report, therefore the total of units and square footage is struck out, although we do show the totals of all structures built including sold walls and all unbuilt space including open walls. All protection whether within your main plant or in outside towns is shown under the one heading "Protection".

Under the main caption, "Leaseholds for other than Cash Consideration" we have added "Cost This Month" and "Cost This Year". These figures can be secured from the Accounting Department as it is an easy matter to take the Space Rental Expense by the month by classification and deduct from that expense the portion that actually represents accrued rental, the difference naturally being the expense incurred for privilege work in that

(Testimony of Gilman B. Haynes)

[Crest]

Foster and Kleiser
COMPANY

OFFICE BULLETIN

San Francisco, Cal.,

classification for the month. By adding the monthly figures together the total expense to date this year can be accrued monthly. It is understood that figures inserted under this head and opposite each classification in the main plant (including secured unbuilt surface) also includes classifications in the outside towns. No figures under this heading will appear on your sheets below Sold Wall Classifications, except secured unbuilt surfaces in your main plant.

The Report of Leases (Cancelled and Secured) and Contact Record Sheet No. 14 (formerly part of Sheet No. 8 and your small contact report as per our office bulleting No. 147) is exactly the same as heretofore except that these two reports are now combined on the same sheet. Such branches that are not keeping at this time a record of contacts will not be in a position to fill in the lower half of this report. The next time a member of the General Lease Department visits your Branch he will install this record for you, if in the meantime it has not already been done.

The Inventory of Competitive Plants, Sheet No. 15, (formerly Sheet No. 9 as per our Office Bulletin No. 74)

(Testimony of Gilman B. Haynes)

is the same as heretofore except the following. Some of these changes have already been made by some of the Branches.

The caption "Last Year" is changed to read "Last Month. The figures under same will be as per your last month's inventory instead of the same month as of a year ago. Immediately following each district you should show a sub total of that district as to the number of locations and units as follows:—

Total Paint 20 X 10 and over

Total Sniping Posting

Total Three Sheet Posting

Total 24 Sheet Posting

A Grand Total is to be shown at the end of your report which will be the total of all districts i.e.

Grand Total—20 X 10 and over

Grand Total—Sniping Posting

Grand Total—Three Sheet Posting

Grand Total—24 Sheet Posting

GRAND TOTAL

All competitive structures, including sniping, are to be shown in this report except painted structures under 20 X 10 in size. Sixty day contact is to be made only, on locations that are within your tight district or on inner highways on which we carry our suburban structures.

(Testimony of Gilman B. Haynes)

Four copies of each of the foregoing reports are to be forwarded to the General Office as heretofore.

Very truly yours,

FOSTER AND KLEISER COMPANY

By G B. Haynes.

GBH/AH

General Lease Manager

No. 5673-C. Special Site vs. Foster & Kleiser Deft
Exhibit No. AAA-12 Filed 1/23 1935 R. S. Zimmerman, Clerk
By Cross Deputy Clerk

Witness continuing: The company subsequently issued another bulletin, No. 242, dated June, 1924. I have read that bulletin recently. That bulletin expressed the policy of Foster & Kleiser Company with respect to leasing at the time it was issued. The pages of the lease manual were dated September 1, 1924, and were sent out to the branches with a bulletin dated September 15, 1924. Prior to that time my instructions with reference to the operation of the leasing system and the policy of Foster & Kleiser Company with respect to leasing had been given verbally.

Whenever I made any changes in the lease manual the new pages were sent to the branches with an office bulletin which requested the branch to return the old pages to me with their acknowledgment. I thereupon destroyed the old pages so they were of no further use. I wanted to have the system uniform and to be sure that the branches had the latest information and that they did not retain any old information.

(Testimony of Gilman B. Haynes)

There was an office bulletin covering every change made in the lease manual to date. I have made a reconstruction of the changes made in the lease manual since the date of its original issuance and have reduced the record of the changes made and the sources where those changes can be found and the number of changes to a chart. I obtained the data from which I constructed this chart from office bulletins and general letters. The general letters which I mentioned were dated August 15, 1924, and the last one was dated April 3, 1933. The office bulletins which I used in the reconstruction of this manual are all listed right here on the left-hand side of the chart. (Photographic copies of the chart were thereupon handed to the court and jury.)

(Thereupon the witness proceeded to give testimony regarding the various changes in the manual).

THE COURT: Mr. Clark, is it your purpose to go through this process with reference to all these pages?

MR. CLARK: Only if I am driven to it. I hope to demonstrate that it can be done, and perhaps induce counsel to say it has been done.

With the permission of court and counsel, Mr. Glensor then interrogated the witness, who testified as follows:

Q Mr. Haynes, can you turn to any bulletin or any general office letter or any communication going out from your office to your branches, wherein it was said that the lease manual as originally constructed did not require your leasees to lease all competitors' locations whether you had use or need for such locations or not?

A That information was never in the manual.

(Testimony of Gilman B. Haynes)

Q That is, it was never in the manual that they were to lease all such locations and it was never in there that they were not to?

A No, sir; there was nothing said. That phraseology was never used in the lease department manual.

Q All right. And can you point to any office bulletin or any other communication going out from the general office to your leasees which said that you must move the competitors and keep them moving, or words to that effect, the same as is said in Bulletins 74 and 242? Was that ever in any lease manual?

A No, sir.

Q Was it ever in your lease manual that they were not to move the competitors as often as possible or keep them moving?

A It was never in the manual.

Q Was there ever any communication that went out from your office prior to Bulletin 550-A, which was issued in 1931 shortly following the James decree down here in Southern California, which cancelled and superseded Bulletins 74 and 242, 209 and some others?

A None to my knowledge that explicitly cancelled except what is mentioned in that bulletin.

BY MR. CLARK:

As lease manager and director of leasing, my purpose in issuing the lease manual was to put every policy of the company and everything that had anything whatsoever to do with leasing in one form. That manual was to supersede anything to the contrary of any kind. I tried to express that when I sent it out in Office Bulletin No. 268. The lease manual refers to all classes of locations, com-

(Testimony of Gilman B. Haynes)

petitive and no-competitive. Anything that was in Bulletins 74, 209 and 242 that I wanted, I included. There is certain wording in those bulletins that I certainly expressed very poorly and the language did not express my thoughts. Anything that was in those bulletins that did not express my thoughts, I did not include in the amendments. We specifically cancelled Bulletins 74 and 242 and others, including 209, by Bulletin No. 550-A in 1931 because when the Government investigators were in our office, those bulletins were called to my attention. The investigators were apparently interested in them and they interpreted them entirely different from what I meant them to mean. At that time I had forgotten about even writing those bulletins. Therefore, when we wrote Bulletin No. 550-A, which I wrote with the assistance of our attorneys, I suggested that we should expressly cancel them right then and there so that there would be no chance of anybody misinterpreting anything that was in them in the future; and that was done.

I have heard of certain accounts which have been called Account A in this case and elsewhere. I first heard of the activities represented in that bookkeeping account in the summer or early fall of 1926. I did not hear of any of those activities until that time and then I heard about them very indirectly. At that time I had sort of a grapevine message and heard certain remarks made about the De Luxe Advertising Company. If I remember correctly, I asked Mr. Young about it and Mr. Young just stated to me, "Well, that is just water over the dam. It is work that we did covering locations of the De Luxe Display Company." I was then out of the Los Angeles office be-

(Testimony of Gilman B. Haynes)

tween January, 1924 and the time in 1926 when I spoke to Mr. Young about it, but I never heard about any of those activities until 1926.

I have read this so-called statement of Clyde Meyer which is in evidence as Plaintiff's Exhibit 20-G. I did not know that those activities were resumed in the Los Angeles branch beginning in 1926. I first heard about them when I arrived in San Francisco from the north at one of the branches. Mr. Lausen stated to me that Mr. Musaphia had come up from Los Angeles with Mr. Young a day or two previously and that they had been doing some leasing work of a kind that they never should have done, contrary to the policy of the company. He told me that he gave Mr. Musaphia and Mr. Young positive orders to stop it. He then asked me where I was going and when I told him I was not going any place, he asked me if I would arrange my work so as to go to Los Angeles right away. He told me that he had given instructions to Mr. Musaphia and Mr. Young to go to our attorneys, Gibson, Dunn & Crutcher, and tell them exactly everything that they had done. He then said, "I want you to go down there and see that that is done." I came to Los Angeles very shortly after that, I don't remember exactly what date it was. I was present when that statement was made in Gibson, Dunn & Crutcher's office on September 28, 1927. I have no recollection one way or the other if I reported the result to Mr. Lausen or to any of my superiors. Naturally, when I went back to San Francisco, I told Mr. Lausen I had done as he told me to. It was Mr. Lausen's matter and he was handling it, and I had nothing to do with it except what he told me.

(Testimony of Gilman B. Haynes)

I know a man by the name of Walter Stevens, sometimes known as Wallie Stevens, who used to be a lease-man with Foster & Kleiser.

I first met Wallie Stevens in the Los Angeles branch in the middle of the year 1925. I had talked with Mr. O'Neil, the Seattle Branch Manager, regarding the replacement of the Lease Manager up there, to replace Mr. Macready, who was not of a Lease Manager type. I turned to Los Angeles for the new Lease Manager because that branch had about 50 or 60 leasemen and a man could be drawn from that organization without upsetting the organization. I did not know that Wallie Stevens had done any work with Clyde Meyer in the so-called undercover department when I was looking for a lease manager for Seattle. He was recommended by Mr. Musaphia and Mr. Young. I don't recall that I ever discussed his qualifications with Westbrook, or left to Westbrook the matter of selecting or recommending a lease manager for Seattle. Wallie Stevens went to Seattle about the middle of 1925. I did not give him any instructions about curbing competition with the Stevens Company in Seattle prior to his leaving. I undoubtedly informed him that we had a very active competitor up there. One of the reasons we wanted a new lease manager in Seattle was because we were confronted with competition for leases. Our competitor in Seattle was the C. E. Stevens Company.

The first time I went to Seattle after Wallie Stevens went up there was probably four or five months after he left. I think I had just one conversation with C. E. Stevens while I was there. I had never had more than one conference with him and that was at the Olympic Hotel where

(Testimony of Gilman B. Haynes)

I had lunch with Mr. C. E. Stevens and Mr. O'Neil, the Seattle Branch Manager. There were several locations in Seattle that we had under lease and Mr. Stevens also claimed some rights to the same locations. The conversation was opened by our submitting to Mr. Stevens our leases in evidence of our rights to those locations. I was under the impression that he was going to do likewise and that we were going to lay our cards on the table and decide who was entitled to the property and whoever had such, that was to be all there was to it. We asked him to submit his leases for inspection. Our leases were submitted to him and my recollection is that he inspected them. He did not submit his leases or any evidence of his rights to those locations. The substance of Mr. Stevens' conversation was that he wanted to make an arrangement with us about fighting for locations, that is, the fighting that was going on between the two of us for locations. He suggested some way of getting together whereby we would not fight with him for the locations in which he was interested and that he would not fight with us on those in which we were interested. I told him that it was just ridiculous, that he was a growing competitor and that we were growing too and that we were both going to have demand for lots of locations in the future and that such an arrangement just simply could not work. No agreement at all with respect to the rights that we each claimed in the locations was made. I recall that we told him that we would just have to submit the matters to our attorneys.

Q Let me ask you a question, Mr. Haynes, specifically: Did you say to Mr. Stevens at that time, "It is the policy of the company"—meaning Foster & Kleiser Company—

(Testimony of Gilman B. Haynes)

“We are going to take all of the locations, all the good locations of yours that we want. You can take all of ours that you can get”?

A No.

I did not say that or anything like it in substance nor did Mr. O’Neil say it. I was there all the time during luncheon. I arrived and left with Mr. O’Neil.

When competition for outdoor advertising locations comes into the field, the effect on the rate of rental paid for locations is that it forces the rental up. We have had a great deal of competition for locations during the time I have been lease manager. The worst places that we have had competition have been in Los Angeles, Seattle and Portland. We had some competition in Oakland with the Coast Advertising Company and also with the Special Site Sign Company, but in a minor way compared to others.

At one time I wrote monthly reports summarizing the activities and the results reached by my department and containing now and then a statement with respect to competition. I did that over a period of a couple of years from March, 1928 to April, 1930. These reports were intended for Mr. Kleiser, the president of the company. Here and there in the reports there is a quotation made of a report from some branch about competition. I received letters other than the written reports that went to the general office. After I received those letters I would take out of them anything that I thought would be of any possible interest to Mr. Kleiser and incorporate them in there and then I destroyed the letters.

It was vital to watch a situation into which a competitor was coming, Portland, for instance. When a competitor

(Testimony of Gilman B. Haynes)

comes in that is the time that we have got to put on pressure, trying to buy our raw materials at a decent figure, getting locations for built space and for reserve. We always got locations at a lower price before competition got in. After competition came in at any place, rentals were much higher.

With the consent of counsel for the defendant, Mr. Glensor thereupon examined the witness, who testified as follows:

BY MR. GLENSOR:

The extra tight district in San Francisco originally consisted of the triangle bounded by Post, Van Ness Avenue and Market Street. At the time of this report of August 1, 1928, it had been enlarged. According to my statement in the report, the district was nearly 100% tight. It was the nearest to 100% of any of our other branches except possibly Seattle, and the two seemed to be on a par. There were a lot of locations left in the extra tight districts in both cities. A district may be 100% tight and there may be 200 or 300 locations left in it. The expression 100% tight refers to the locations that were available at that time, that could be leased at rentals that we thought would be fair and that would be what we were willing to pay. There are a lot of locations in many districts which owners do not care to lease for advertising purposes; sometimes it will take a couple of years to sell them the idea. As stated in the report, the extra tight district in San Francisco was 100 per cent tight, in that between ourselves and our competitors we had all of the available locations under lease in that district at that time. All of the available ad-

(Testimony of Gilman B. Haynes)

vertising locations were gone. The expression "100 per cent tight" absolutely did not mean in any sense that our competitors were 100 per cent excluded from that district.

BY MR. CLARK:

The fact is that Foster & Kleiser Company ever since I have been with them have wanted all the good outdoor advertising locations that they could use. If getting these locations had the effect of excluding competitors from getting any outdoor advertising locations any place on the Pacific Coast area, the purpose of acquiring these locations was not to exclude competitors from getting any outdoor advertising locations. The purpose of getting them was because we needed them in the conduct of our business.

I do not say that the tight and extra tight districts were called by those names because Foster & Kleiser Company had them a hundred per cent. Certainly competitors have locations in the tight and extra tight districts. I have never seen the time when they did not.

I would judge that Foster & Kleiser had the greatest number of outdoor advertising leases in the entire Pacific Coast area in the calendar year 1929-30. At that time I would say that they had about 25,000 live leases up and down the Coast, from the Canadian line to Mexico. We no longer have that many leases. Foster & Kleiser Company, like everyone else, was affected by the depression. When the depression came along we got out of all the leases that we could possibly get out of that we had no use for. We began to "bail out". We started with unbuilt locations because that was the way to save revenue quickly. That saved revenue because our structures were not on the property and we did not have to move them. We also

(Testimony of Gilman B. Haynes)

got rid of a lot of leases on property on which we had built structures and we took down a lot of plant. When we concluded the process of bailing out, that left about 15,000 leases; so between the peak and when we had finished our bailing out process, it would be my estimate that we got rid of some 10,000 leases. We have now approximately 60 per cent in number of leases of what we had in our high period.

CROSS EXAMINATION

BY MR. GLENSOR:

When we started this bailing out process we had more leases than we had need for, due to the depression. We did not stop our contacts on competitive locations. From 1922 to 1929 our business was increasing and consequently our acquisition of leaseholds was increasing. There was a more or less steady uptrend in business and in the acquisition of leaseholds during all that time.

According to Bulletin No. 329 which was written in 1925, Foster & Kleiser Company had a total of 18,985 leases. We made a change in our system of leasing in 1929; I wouldn't call it a radical change.

I recall Bulletin No. 519 dated May 8, 1929, which is in evidence here as Exhibit 2-H, which changed the designation of the tight and extra tight districts to traffic areas and also eliminated the terms "extra dangerous", "dangerous", "vital", "hot", "extra hot", and so forth, substituting an alphabetical system of grading. I remember making that change; I wrote the bulletin. I can't recall what Mr. Kleiser said in expressing his wishes to me about making those changes. The bulletin starts off, "at Mr.

(Testimony of Gilman B. Haynes)

Kleiser's request" so evidently I talked to him about it but I don't recall what he said.

I recall Office Bulletin No. 522 which is signed by Mr. Kleiser. I don't recall all the details of it.

Notwithstanding the language used in Bulletin No. 74 in 1922 and Bulletin No. 242 in 1924, it was never the policy of Foster & Kleiser Company to try and take competitors' sites just for the purpose of moving them off their locations. If we needed them, we took them. If we did not need the site, we did not try to get it. That has been our policy from 1922 right down to 1929 and that is what those bulletins properly interpreted and understood mean.

I don't see any difference between the policy expressed in Bulletin No. 522 and the policy of the company previous to that bulletin.

We issued Bulletin No. 524 on June 19, 1929 which made numerous changes in the lease department manual. The new pages of the lease department manual replaced all previous sheets which had related to competitive leasing with the exception of pages 67 and 68 and the two new pages issued with that bulletin, 82 and 83. A good many other pages of the manual not relating to competition were also changed by new pages sent out with that bulletin. Bulletin No. 524 also directed the rewriting of the field cards and office record cards relating to competition and the destruction of some of them. I estimated that we had about 100,000 field cards and office record cards. I couldn't say exactly how many of those were blue cards relating to competitive leasing. The difference after the cards were rewritten was that some of the spaces in the form were

(Testimony of Gilman B. Haynes)

changed and the new cards were buff instead of blue. Buff is the same color that we always had.

Q Was there any particular reason or occasion for these numerous changes which I have just gone over with you, of your leasing policy with respect to competition, in the spring of 1929?

A There was no change in our policy.

Q When did you first personally hear of the activity which finally resulted in the Government investigation of your Company to which you adverted yesterday?

MR. CLARK: That question assumes something that is not in evidence and I object to it on that ground.

THE COURT: Well, the witness testified, did he not, to some such investigation?

MR. GLENSOR: Yes, sir.

MR. CLARK: Well, that was not the question. The question was "When did you first hear of the activity which resulted in the Government investigation?". Now, what activity is counsel talking about?

THE COURT: Overruled.

To which ruling of the court the defendants then and there duly and regularly excepted and to which defendant Foster & Kleiser Company still excepts and here designates as Exception No. 228.

Q When did you first hear of this proposed Government investigation; that there might be one or that there was going to be one?

A Well, I believe that was in 1930, sometime.





